HOUSE OF REPRESENTATIVES—*Monday, August 3, 1992*

The House met at 12 noon and was called to order by the Speaker pro tempore (Mr. MONTGOMERY).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 31, 1992.

I hereby designate the Honorable G.V. (SONNY) MONTGOMERY to act as Speaker pro tempore on Monday, August 3, 1992.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we look to our communities and to our world, our eyes are often filled with scenes of hostility and the anguish of people living in suspicion and hatred with each other. Remind us, gracious God, that in addition to seeing the reality of selfishness in life, may we also see the power of the spirit, of respect and esteem and acts of justice that are also a part of the lives of people. May our dedication be as reconcilers of disputes and as agents of peace. May our words and deeds, our attitudes and our feelings, be directed to the good works of justice and mercy, the opportunities for which are all about us. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. MAZZOLI] will lead the House in the Pledge of Allegiance.

Mr. MAZZOLI led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONTROLS NEEDED ON CAMPAIGN SPENDING BY INDIVIDUAL CANDIDATES

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, there is an audible intake of breath by my audiences when I tell them that up to $1 million is sometimes spent to win a seat in the House of Representatives.

I wonder what my audience's reaction now will be when I report that this spring $3.4 million was spent, not to win a House seat, but simply to win the right to run for that House seat. And, of that $3.4 million, $3.3 million was contributed by the candidate himself.

Too much money is being spent in campaigns both by individuals on their own behalf and by political action committees and other special interest groups.

Now Congress can control what political action committees spend, but it cannot, under the Buckley-Valeo Supreme Court case, which cited constitutional reasons, control what individuals can spend on their own campaigns.

There is pending House Joint Resolution 524, offered by the gentleman from Michigan [Mr. DINGELL], of which I am a sponsor, which would change that. It would give Congress the authority to limit what individuals can contribute to their own campaigns.

Please cosponsor House Joint Resolution 524 and, by that, cosponsor better government.

FIFTY DAYS SINCE DEFEAT OF BALANCED BUDGET AMENDMENT: STILL NO DEMOCRAT PARTY SOLUTION TO DEFICIT

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, it has now been 50 days since the tax and spend Democrats who control Congress delivered a knock-out punch to the American taxpayer when they successfully defeated a balanced budget amendment.

Through the use of scare tactics on the elderly and under the guise of a promise from the Budget Committee chairman to "bring to the floor an enforcement procedure to move us toward a balanced budget with tough enforcement regardless of what happens," my colleagues on the other side of the aisle defeated efforts, which an overwhelming majority of Americans support, to balance the Federal budget.

Well, to borrow a line from a popular commercial, "Where's the Beef?" Mr. Speaker, where is the enforcement procedure that the chairman of the Budget Committee promised 50 days ago?

It is estimated that the national debt grows by $1.2 billion a day. That is almost an additional $60 billion in debt facing the American taxpayers since the Democrats defeated the balanced budget amendment. We ought to be ashamed! It is no wonder why people have had all they can stand of a Democrat-controlled Congress.

For Americans to send Bill Clinton and AL GORE to the White House to control runaway Federal spending by a Congress controlled by Democrats makes as much sense as sending a fire truck to a fire with its water tanks filled with gasoline.

SUPPORT BILL CLINTON AND GOOD HEALTH CARE

(Mr. STARK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STARK. Mr. Speaker, yesterday the President showed his true colors in Illinois by attacking a Clinton proposal, and in his attack he indicated what he really intends to do, and that is to end Medicare.

The President does not trust the Government to do anything. He does not trust the people. He does not trust other governments. He would end Medicare for seniors.

I would challenge anybody in this Hall to stand up and say that they would oppose Medicare as a good system for all seniors.

Clinton, on the other hand, Bill Clinton would provide all Americans with access to affordable health care.

Bush protects the big insurance companies, rich doctors, gouging for- profit hospitals, high-charging pharmaceutical companies; but Clinton would change that. He would hold down costs, make insurance available to all and pay fair rates to providers.

It is not enough for the President to use his plan, which is abstinence, celibacy, exercise and prayer. If you think that will bring health care to Americans, guess again; support Bill Clinton for change for the better.

COMMENDING PRESIDENT'S APPROVAL OF FUNDS FOR SALE OF PORK

(Mr. BEREUTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, for my export 1-minute today, I would like to commend President Bush's approval yesterday of Export Enhancement Program funds for the sale of pork to the Commonwealth of Independent States.

Mr. Speaker, this decision clearly demonstrates the President's longstanding commitment to agriculture and provides an excellent opportunity for United States farmers, the people of the former Soviet Union and the United States' economy.

It is estimated that the pork sale could add $125 million to the U.S. economy by creating additional revenues for pork producers and food processors as well. The sale could also boost significantly the consumption of corn and soybeans.

Mr. Speaker, this decision marks the beginning of an important commitment to compete in world markets for value-added agriculture products. Already, the European Community is aggressively pursuing the sale of such products in emerging markets throughout the world. EEP funding is essential to allow American pork producers to fairly compete with the heavily subsidized European Community meat producers.

The approval of this sale—which would be equal to one-third of all U.S. pork exports—also underlines the importance of agriculture exports to the U.S. economy. From October 1991 to May 1992, the U.S. recorded an agricultural trade surplus of $13.4 billion.

Mr. Speaker, exports of U.S. goods and services continually play a larger role in this Nation's prosperity, and agricultural exports are a significant portion of that total. Therefore, this Member applauds the President's recent decision to compete in the rapidly growing markets of value added and high value agricultural products.

STOP KILLINGS BY SERBIANS

(Mr. BILBRAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BILBRAY. Mr. Speaker, this weekend in Bosnia, one of the most horrible incidents took place. A busload of orphans, all very young children, was passing from Bosnia across to the coast of Croatia to be able to find a place to live safely. The bus was clearly marked. It was marked and the Serbian "Nationalist" forces were notified that they were going down this corridor.

As the nurses said, no one believed that the Serbian Nationalists, which are not Serbian Nationalists, they are a bunch of thugs and terrorists, would attack this bus. They did. They machine gunned it and killed two young girls, one 14 months old and one 3 years old.

The time has come for the Europeans and the Americans to do a surgical strike on the Serbian positions above these roads. We cannot allow thousands of innocents to go on being killed.

As the Bosnians and Croatians have said, if there was oil in Bosnia or in Croatia, we would be there in 5 minutes.

We in the United States as the leader of the free world must do something now to make sure this useless and inhumane slaughter is discontinued. Serbian Nationalists or terrorists as they are in that area must be brought to heel and they must be stopped before this slaughter becomes a genocide of those people who are not Serbians in the area.

□ 1210

GEORGE BUSH'S SCARE TALK ON HEALTH CARE

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, yesterday President Bush showed us how low a desperate candidate will go on the health care issue.

He said Bill Clinton's health reform plan would mean Government-controlled medicine, waiting lines, and unemployment. That is the kind of scare talk Republican candidates have been using for decades to block health care reform.

The truth is, the Clinton plan would control costs, provide affordable health care for everyone, let doctors treat disease instead of filling out paperwork, and level the playing field for American business.

George Bush would rather frighten voters than face the facts. The cost of health care has tripled in the Reagan-Bush years. Millions of American families have lost health insurance in this recession, and millions more live in daily fear that a major illness will bankrupt them.

But all George Bush proposes to do is throw more money at the health insurance industry through tax credits, cut back on private health insurance and Medicare benefits, and shift the burden to the States. Bill Clinton's plan is called pay or play—George Bush's should be called pay and pray.

Mr. Speaker, the American people have had enough of George Bush's scare talk and distortion. They are going to elect a President who will take on the special interests and lead the way to real health care reform.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1790

Mr. DANNEMEYER. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1790.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, August 4, 1992.

TAX TREATMENT OF ASSOCIATIONS RESULTING FROM MERGERS OF CERTAIN FARM CREDIT ASSOCIATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5642) to amend the Internal Revenue Code of 1986 with respect to the treatment of certain property and casualty insurance companies under the minimum tax, and for other purposes.

The Clerk read as follows:

H.R. 5642

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) ADJUSTED CURRENT EARNINGS PREFERENCE.—

(1) IN GENERAL.—Clause (i) of section 56(g)(4)(B) of the Internal Revenue Code of 1986 (relating to inclusion of items included for purposes of computing earnings and profits) is amended by adding at the end thereof the following new sentence: "In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1989.

(b) ADJUSTMENTS FOR BOOK INCOME.—In applying section 56(f) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) to any insurance company taxable under section 831(b) of such Code, only ..et investment income as reported in the company's applicable financial statement shall be taken into account in determining the adjusted net book income of such insurance company. The preceding sentence shall apply to taxable years beginning after December 31, 1986, and before January 1, 1990.

SEC. 2. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS.

If an employer elects under Treasury Regulation 31.3402(g)-1 to determine the amount

to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 24 percent. The preceding sentence shall apply to payments made after December 31, 1993.

SEC. 3. TAX TREATMENT OF ASSOCIATIONS RESULTING FROM MERGERS OF CERTAIN FARM CREDIT ASSOCIATIONS.

(a) IN GENERAL.—Part IV of subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to farmers' cooperatives) is amended by adding after section 521 the following new section:

"SEC. 522. CERTAIN MERGED FARM CREDIT ASSOCIATIONS.

"(a) IN GENERAL.—For purposes of this title, except as otherwise provided in this section, an applicable merged association shall be treated in the same manner as a production credit association is treated under section 2.6 of the Farm Credit Act of 1971 (12 U.S.C. 2077).

"(b) TREATMENT OF EXEMPT ITEMS.—

"(1) IN GENERAL.—For purposes of this title, an exempt item shall not be taken into account in computing the tax liability of any applicable merged association.

"(2) EXEMPT ITEM.—For purposes of this subsection, the term 'exempt item' means any item of income, gain, loss, or deduction which is properly allocable to loans described in section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) which have an initial term of at least 10 years.

"(c) DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE MERGED ASSOCIATION.—The term 'applicable merged association' means any association resulting from a merger under section 7.8 of the Farm Credit Act of 1971 or section 411 of the Agricultural Credit Act of 1987 of 1 or more production credit associations and 1 or more Federal land bank associations. Such term includes any corporation resulting from a subsequent merger of an association referred to in the preceding sentence with another corporation.

"(2) REFERENCES TO FARM CREDIT ACT OF 1971.—Any reference in this section to the Farm Credit Act of 1971 shall be a reference to such section as in effect immediately before the date of the enactment of this section."

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for part IV of subchapter F of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 522. Certain merged farm credit associations."

(2)(A) The part heading for such part IV is amended by adding at the end thereof the following: "; **CERTAIN FARM CREDIT ASSOCIATIONS**".

(B) The item relating to part IV in the table of parts for subchapter F of chapter 1 of such Code is amended by inserting "; certain farm credit associations" after "cooperatives".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today to urge my colleagues to support passage of H.R. 5642, a bill I coauthored along with my friend, Mr. JACOBS of Indiana. Section 1 of the bill addresses a minimum tax calculation problem for very small property and casualty insurance companies. These companies write less than $1.2 million in annual premium volume.

They are companies who only write business in one State and in many instances, one county. They are located in rural areas and service our farmers and small towns, insurance markets large companies are unwilling to service. The companies have been in business, in many cases, for over 100 years, and have 2 to 4 employees.

In 1986, the property/casualty insurance tax code was substantially changed and rewritten. Many changes were also made to the alternative minimum tax calculation.

The Congress decided that small property and casualty companies (less than $1.2 million annual premium) did not have sophisticated staff—attorneys, actuaries, investment and tax advisers—and would find it difficult to comply with the new Tax Code requirements.

In addition, because of the size and operations of these small companies, they don't have "loss reserves" and "unearned premium reserves."

Consequently, a different tax provision was included in the 1986 Tax Reform Act which allows these companies to elect to be taxed on investment income only. But we failed to include similar language in the alternative minimum Tax Code.

In recent years, the IRS has determined that without a legislative change to the Tax Code clarifying the AMT calculation, very small property and casualty insurers will have to make all the same calculations as the very large companies in order to comply with the AMT. Section I makes the necessary change to the Tax Code. With the enactment of the bill, very small property and casualty insurers will make their AMT calculation using taxable and tax-exempt investment income as their income basis.

While simplifying their tax calculations, the change also guarantees these companies will always be taxpayers even in years they experience underwriting losses.

Section I merely clarifies the intent of Congress in the 1986 Tax Reform Act.

Mr. Speaker, of particular interest to me is section 3 of the bill. That section clarifies the intent of the House of Representatives when it passed the Agricultural Credit Act of 1987, by restoring the traditional tax treatment of the associations of the Farm Credit System.

The historical tax treatment was unintentionally altered as part of the restructuring brought about by the 1987 act.

As approved by the Committee on Ways and Means, section 3 of the bill clarifies that the Farm Credit Systems' Agricultural Credit Associations are exempt from taxation on the earnings from long-term loans of the type made by Federal land bank associations.

Congress first established this exemption for the Farm Credit System when it created the system 75 years ago.

That exemption was unintentionally removed for Agricultural Credit Associations when the Congress sought to restore confidence and improve efficiency in the system in 1987.

In the 1987 Act, Congress recognized that some of the farmer-borrowers who own the Farm Credit System institutions may wish to organize their local associations to provide for one-stop credit services.

Accordingly, the 1987 act authorized the merger of Production Credit Associations with Federal Land Bank Associations.

The resulting Agricultural Credit Associations can provide both long-term mortgage loans and short-term production loans. When the mergers were authorized it was assumed that the attributes of the two original lenders would be retained, including the tax treatment of the long-term mortgage loans.

Somewhere along the way our intent that the tax treatment of income from long-term mortgage loans continue unchanged was lost. The merger of a taxable entity, the short-term lender, with an exempt entity, the long-term lender, resulted in a new taxable entity. Mr. Speaker, this substantially increases the cost of operating this new entity.

Consequently, the option for the System's farmer-borrowers to merge land bank and production credit associations to form a single Agricultural Credit Association has been rendered less attractive.

This bill will clarify that the intent of the 1987 act was to continue the traditional tax treatment of long-term loans, including when such loans are made by Agricultural Credit Associations.

Mr. Speaker, I am pleased to inform the House that the chairman of the Committee on Agriculture, Mr. DE LA GARZA, and the ranking Republican of that committee, Mr. COLEMAN, both support this legislation.

In order to allow the farmer-borrowers-owners of the Farm Credit System to choose how to provide credit to the nation's agricultural community as they best see fit, as was originally intended in the 1987 act, I urge my col-

leagues to enthusiastically support H.R. 5642.

□ 1220

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill certainly needs no further explanation. It was not deemed to be controversial when it was considered in the Committee on Ways and Means, and we heard no objections since then.

Mr. GRANDY. Mr. Speaker, I rise in strong support of H.R. 5642 and urge its favorable adoption by the House and its eventual adoption into law. H.R. 5642 serves to remedy a unintended consequence of the tax provisions of the Agricultural Credit Act [ACA] of 1987. As a former member of the House Agriculture Committee who was intimately involved in the formulation of that act, I can assure you that increasing the tax burden on cooperatively owned farm credit banks was not the intent of that legislation. On the contrary, the principal purpose of that act was to restore the health of the Farm Credit System [FCS] which had suffered significantly in the mid-1980's.

It has been longstanding tax policy to not tax the income from long-term mortgage lending of Farm Credit System institutions. Prior to the 1987 act, these institutions consisted primarily of Land Bank Associations. On the other hand, the income from short-term lending for operational expenses, provided by Production Credit Associations in the FCS, has always been taxable. One of the principal means of reestablishing the Farm Credit System on firm financial footing under the ACA was to permit the merger of the long- and short-term lending arms of the System in order to improve efficiencies, spread risk, and cut costs.

Unfortunately, due to the legislative timing of the ACA, while the House bill addressed the differential taxation of merged short- and long-term institutions—known as Agricultural Credit Associations—the final act was silent on how they were to be taxed. Since that time, rulings by the Internal Revenue Service have ruled that all the income—both from long-term mortgage lending and short-term operational lending—of a merged Agricultural Credit Association is taxable. Such a ruling violates longstanding, wise tax policy and frustrates one of the means by which the act tried to improve the health of the FCS—the merger of associations with identical or substantially similar lending territories.

H.R. 5642 serves to right this oversight and to restore to their full effect the provisions of the Agricultural Credit Act for insuring the continued availability of affordable and adequate farm and ranch financing. I want to stress that the tax exemption provided in H.R. 5642 is strictly limited to income derived by merged associations from long-term real estate mortgage loans of the type that were formerly exempt.

I urge my colleagues to pass this bill and I look forward to its adoption into law.

Mr. MCGRATH. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5642.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill was passed.

A motion to reconsider was laid on the table.

EXEMPTING FROM UBIT THE CONDUCT OF CERTAIN GAMES OF CHANCE BY TAX-EXEMPT ORGANIZATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5660) to amend the Internal Revenue Code of 1986 to provide that the conducting of certain games of chance shall not be treated as an unrelated trade or business, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5660

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 513(f) of the Internal Revenue Code of 1986 (relating to certain bingo games) is amended by inserting before the period "or other qualified games of chance".

(b) OTHER QUALIFIED GAMES OF CHANCE.—Subsection (f) of section 513 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) OTHER QUALIFIED GAMES OF CHANCE.—For purposes of paragraph (1), the term 'other qualified game of chance' means any game of chance (other than bingo) if—

"(A) the conducting of such game by the organization does not violate State or local law,

"(B) the conducting of such game by organizations which are not nonprofit organizations would violate such law, and

"(C) no substantial part of the work in conducting such game is performed by individuals principally engaged in performing gaming services for hire."

(c) CLERICAL AMENDMENT.—The subsection heading of section 513(f) of such Code is amended by striking "BINGO GAMES" and inserting "GAMES OF CHANCE".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to games conducted after the date of the enactment of this Act.

SEC. 2. INCREASE IN RATE OF WITHHOLDING TAX ON CERTAIN GAMBLING WINNINGS.

(a) IN GENERAL.—Paragraph (1) of section 3402(q) of the Internal Revenue Code of 1986 (relating to extension of withholding to certain gambling winnings) is amended by striking "20 percent" and inserting "28 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proceeds from wagers placed after December 31, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

Mr. BILBRAY. Mr. Speaker, I rise in opposition to H.R. 5660, as amended.

The SPEAKER pro tempore. Is the gentleman from New York [Mr. MCGRATH] opposed to this legislation?

Mr. MCGRATH. I am not opposed, Mr. Speaker, but we have a Member who is.

The SPEAKER pro tempore. Because the gentleman from Nevada [Mr. BILBRAY] has risen in opposition to H.R. 5660, as amended, he will be recognized for 20 minutes.

Mr. BILBRAY. Mr. Speaker, I will yield time to my colleague, the gentlewoman from Nevada [Mrs. VUCANOVICH], and, if the Speaker will so allow, we can split the time between the proponents and opponents.

The SPEAKER pro tempore. The Chair concurs.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS] for 20 minutes in favor of this legislation, and the gentleman from Nevada [Mr. BILBRAY] for 20 minutes in opposition to this legislation.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank the distinguished ranking Member, the gentleman from Florida [Mr. GIBBONS], my friend, who does such an outstanding job on the Committee on Ways and Means. I also want to thank the gentleman from New York [Mr. MCGRATH], my very good friend by way of Prince George's County, MD. He lived in my district for a period of time, and he has worked very hard on this legislation, as well as being very concerned about the objectives.

Mr. Speaker, I rise in strong support of H.R. 5660, as amended.

This legislation, I think frankly, is not opposed by anybody in terms of its objective and the tax treatment that it will give to certain charitable organizations. My friends from Nevada, with whom I have discussed this matter, did have a great concern with the original formulation of the bill. I trust they are somewhat more sanguine about its present posture, but obviously, as I can see, they are still not pleased with the legislation, and they will speak for themselves.

I also, Mr. Speaker, want to say that the gentleman from Nebraska [Mr. HOAGLAND], my good friend, has introduced legislation. We have joined together in this effort, and he has been a yeoman leader on this effort, and I want to congratulate him.

Mr. Speaker, briefly this legislation is directed at the Federal Government's increasing focus on the burden of providing community services on charitable institutions. We talk about volunteerism. We talk about people be-

coming involved in doing good in our communities. In fact, many charitable organizations are doing that. These groups often must be creative in raising the funds necessary to their worthwhile projects because of shortage of efforts. Games like bingo have been used for years and have enjoyed exemption from taxation. Other games that have also been used, like raffles, casino nights, pull tabs and amusements are subject to taxation. What this means is that groups like the Jaycees, Knights of Columbus, volunteer fire departments, V.F.W. halls, and thousands of other charitable institutions must not only keep two separate accountings for taxable and nontaxable fund raising events, but they must also divert scarce resources from needy community projects.

My district and my county that I now represent, which is volunteer and career service professionals; all are not low-expense operations. The balance of my district is all volunteer service. A firepumper, Mr. Speaker, as you probably know, can run over $200,000 and a fire tractor to pull ladder trailers can run over $140,000. Just this past Saturday I was visiting the Berwyn Heights Volunteer Fire Department. They have a 106-foot ladder truck. The price is $527,000. In my district, in fact, over $12 million worth of fire equipment has been purchased since 1987 with the revenue, in some part, though not exclusively, but in part from revenues from games of chance.

In addition, the Jaycees have built and operate a community center for senior citizens; Jaycees of which I used to be a member, have built a senior citizen community center with revenues raised in this way.

H.R. 5660, exempts funds raised by these charities from the unrelated business income tax—only if the games of chance are operated by a 501(C)(3) charitable institutions. These are not private, profit-making/profit-diverting organizations. These funds go directly into public-good projects. Current law already allows this exemption already for any charitable organization within the State of North Dakota, showing how well represented the North Dakota folks have been. The North Dakota folks have been represented very well, even though their Representative is not listening to me currently.

I say to the gentleman from North Dakota, "Mr. DORGAN, I was just saying how well the folks of North Dakota have been represented, how these organizatons have already been taken care of in your State."

The IRS has recently started to enforce this law, cracking down in Maryland and Nebraska to collect unpaid taxes against these charities, and they plan to expand their crackdown, and my colleagues ought to take care of this, to over 30 States that allow such charity fundraisers. That is why we must act now to make clear that this exemption applies to everyone the same as it now does in North Dakota.

Mr. Speaker, there has been some concern raised by my friends in the Nevada delegation, as I have said, over the original bill's revenue raising proposal. Originally, this bill proposed to raise the excise tax on wagering from .25 percent to 1 percent. That caused a problem; we understood that, and I have assured my colleagues that we will work with them on that effort. We have substituted in this amended bill a new revenue offset. We have raised the withholding rate from 20 percent to 28 percent, and it only applies to winnings in excess of $1,000 and if the odds are 300 to 1. This bill would increase that withholding to 28 percent.

□ 1230

Mr. Speaker, one ought to understand why this revenue source raises funds. It raises funds because it provides for the collection of taxes that are due and owing to the Federal Government but which are now not paid. That is what needs to be understood with respect to this revenue source. It is revenue which is due and owing to the Federal Government but which is not paid. That is to say this revenue source speaks to tax avoidance. We all know what happens when we have tax avoidance. They ship the cost of that to the rest of us.

So this has two very positive aspects: First, it raises revenue, and second, it gets to that tax avoidance.

Mr. MCGRATH. Mr. Speaker, will the gentleman yield?

Mr. HOYER. I am pleased to yield to the gentleman from New York.

Mr. MCGRATH. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I support the efforts of my colleague, the gentleman from Maryland. Charitable fundraising activities should not be subject to the unrelated business income tax. The tax can completely eliminate proceeds from events that finance essential public services such as fire protection, health care, and education. The individuals running the fundraising events are not profiting from them. As long as the charities are complying with other State and Federal law, their fundraising events should not be treated as an unrelated business activity.

Mr. HOYER. Mr. Speaker, I thank the gentleman from New York [Mr. MCGRATH] for his very worthwhile and cogent comments and also for the diligent work he has extended on behalf of this legislation. I am only sorry that next year when I have a similar problem, he will not be here to work with us. His retirement is going to result in a great loss to the Congress.

Mr. Speaker, I have letters from the National Multiple Sclerosis Society, the Jaycees, and the National Volunteer Fire Council, which, by the way, represents over 20,000 fire departments across this country, all writing in support of this legislation. I have also heard from the Knights of Columbus and from veterans groups, as I am sure many of my colleagues have who support this legislation.

Mr. Speaker, we all come to this well and speak on behalf of many worthwhile and critical community projects performed by charitable institutions in our districts. We have all engaged in ribbon-cuttings or ridden in parades with our local volunteer fire departments. Today, Mr. Speaker, we have an opportunity to do something for them to help them continue their work in our communities and thereby do something significant for our communities and our people. We can help them by treating them fairly and extending to all what a few have enjoyed for years.

Today we can pass H.R. 5660 and allow them to reinvest their hard-earned dollars back into our communities.

Mr. Speaker, I urge my colleagues to strongly support this legislation.

CRESCENT CITIES JAYCEES
FOUNDATION, INC.,
Oxon Hill, MD, July 30, 1992.

Re H.R. 5660.

Hon. STENY HOYER,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE HOYER: On behalf of the Crescent Cities Jaycees Foundation, I respectfully request a favorable vote on H.R. 5660, which is currently scheduled for floor consideration on Monday.

Our organization is one of thousands of non-profits throughout the country that depend on revenue raised from charity games of chance. Because of the Tax Reform Act of 1986, organizations that conduct these games of chance are now subject to unrelated business income tax ("UBIT").

H.R. 5660, if passed, would once again restore the exemption from UBIT for qualified non-profit organizations.

By assuming a responsibility traditionally reserved to the federal, state, and local governments, non-profit organizations can once again be free to re-invest substantially more into our local communities and provide benefits through charitable programs for the elderly, needy, children and homeless.

Thank you for your attention to this matter.

Sincerely,

H. DAVID KROLL,
President.

NATIONAL MULTIPLE
SCLEROSIS SOCIETY,
New York, NY, July 24, 1992.

Hon. PETER HOAGLAND,
House of Representatives,
Washington, DC.

DEAR MR. HOAGLAND: On behalf of the 400,000 members of the National Multiple Sclerosis Society, I write to express our strong support for H.R. 5660 and to urge its passage.

In states where it is legal for nonprofits to conduct fundraising through games of chance, there is opportunity for our chapters to raise significant funds. The bill would enhance our chapters' ability to achieve our mission goals of research, services, edu-

cation and advocacy on behalf of people who live with multiple sclerosis.

The best example we have is our chapter in Minnesota which raises funds through paper slots or pull tabs throughout the state. The chapter has plowed back large portions of the funds directly into the communities in which they were raised. For example, the chapter has used the revenue to put curb cuts in a small town in southern Minnesota.

Charitable gambling, like any other form of fundraising, provides nonprofit organizations with the ability to help those who cannot get help from anywhere else. America has a strong tradition of volunteerism. By eliminating the tax on charitable gaming fundraising, voluntary associations like the National Multiple Sclerosis Society can provide more service to those in need.

Please let us know if there is anything we can do to help pass H.R. 5660.

Sincerely,

MARTHA KEYS,
Vice President, Public Affairs
(Former Member of Congress).

NATIONAL VOLUNTEER FIRE COUNCIL,
Alexandria, VA, July 24, 1992.

Re H.R. 5560.

Hon. JERRY LEWIS,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN LEWIS: I am writing to ask your support for H.R. 5660, which is coming up Monday for floor consideration under suspension of the rules.

The National Volunteer Fire Council (28,000 fire departments and 1,500,000 firefighters) supports this Bill and strongly encourages you to vote favorable.

Many of our member organizations use charity gaming to purchase fire apparatus and equipment. In Prince George's County, Maryland alone, over $12 million in fire apparatus has been purchased since 1987. For many fire departments, charity gaming is their only source of funding.

Thank you very much for your attention to this matter and again I ask for your favorable vote on H.R. 5560.

Sincerely,

ROBERT MCKEON,
Chairman.

Mr. BILBRAY. Mr. Speaker, I yield 5 minutes to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in opposition to H.R. 5660 as amended. The bill exempts income derived from games of chance conducted by tax-exempt organizations from the unrelated business income tax. In order to offset the revenue losses due to the expansion of the unrelated business income tax [UBIT] exemption, the bill increases the withholding on gambling winnings. Under present law, proceeds from a wagering transaction are subject to withholding at a rate of 20 percent if such proceeds exceed $1,000 and if the amount of such proceeds is at least 300 times as large as the amount wagered. Under H.R. 5660 the rate of withholding on proceeds from a wagering transaction would be increased to 28 percent.

The bill defines "other games of chance" as any game that does not require a substantial amount of paid work, that is conducted by a tax-exempt organization, and that is conducted in accordance with State and local laws.

Mr. Speaker, if you were to look in the paper you would find ads for casino nights sponsored by local fire departments and other organizations. These casino nights offer roulette, poker, black jack, Caribbean stud poker among other games. Atlantic City rules are in force all night. These nights are very well organized and well run.

Mr. Speaker, first, the current law, 20 percent is a fair effective tax rate. A 28-percent rate will result in over-withholding with the taxpayers entitled to a refund at a later date. Second, this is not real revenue, it is just an accelerated collection—and in some cases an over-collection.

Mr. Speaker, I have no problem with charities and volunteer fire departments raising money. These are good causes. However, I have a problem with bringing an important tax bill such as this to the House floor under suspension of the rules.

This bill is ill advised and has been rushed to the floor without hearings. Members, such as myself, who have an interest in this bill were given no opportunity to present our views before the Ways and Means Committee. This is not the way the House of Representatives should operate.

I am pleased that no withholding tax is imposed on winnings from slot machines, bingo, or keno. However, Members should be aware that H.R. 5660 does hit State-conducted lotteries. In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent is such proceeds exceed $5,000, regardless of the odds of the wager. H.R. 5660 will increase this rate to 28 percent. I doubt that the representatives of these State lotteries are even aware that this bill exists, let alone being considered on the floor today.

Mr. Speaker, I appreciate the intent of the bill, however, I have a problem with the process. This bill should be sent back to committee and hearings should be held and all interested parties should have an opportunity to express their views.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Speaker, I am, of course, very pleased that the House today is considering H.R. 5660, a bill brought to us with the cooperation of Chairman Rostenkowski and the senior majority member of his committee, the gentleman from Florida [Mr. GIBBONS], and through the efforts of the gentleman from Maryland [Mr. CARDIN], the gentleman from Maryland [Mr. HOYER], and the gentleman from New York [Mr. MCGRATH], whose skills and talents we will sorely miss in the next Congress.

Let me try to explain briefly what has happened in the recent history of Federal taxation of charitable gaming in States like Nebraska and the consequences this has had for a number of Nebraska charities.

In early 1990, due to a technical change contained in the 1986 Tax Reform Act, a number of Nebraska charities began receiving large tax bills, with back taxes, interest, and penalties going back to 1986, for conducting fundraising activities using so-called pickle cards—we call them pickle cards in Nebraska—which had previously been tax-exempt.

Pickle cards are small pull-tab gambling cards. When the tabs are pulled back, slot machine symbols are revealed. They are called pickle cards because they used to be stored in jars that contained pickles on counters. I do not know that they are called pickle cards anywhere else in the country, but they are in Nebraska.

What is important is that this has customarily been low-stakes gaming in Nebraska. These pickle cards cost 50 cents, maybe a dollar, and if you are lucky, you will win $5, maybe $10, and the proceeds go the charity that is selling the cards. In Nebraska they are used by Catholic parishes to raise funds for their schools. At spaghetti dinners and pancake breakfasts, representatives of the church will sell the cards to parishioners as a traditional recreational way of raising funds. This makes a difference in some cases whether Catholic schools can stay open or not in the State of Nebraska.

Other nonprofit organizations have used them extensively for many years. They are used by organizations like the Jaycees. The gentleman from Maryland [Mr. HOYER] in his comments earlier talked about the various things the Jaycees in Maryland have funded with the proceeds of this low-stakes charitable gambling. Similarly, in Nebraska the Jaycees through the years have funded a number of worthwhile projects.

□ 1240

Volunteer fire departments in Nebraska, the Fraternal Order of Police, private schools like Roncalli and Mercy in Omaha, American Legion posts and Veterans of Foreign Wars chapters, events like the Septemberfest Salute to Labor, and athletic clubs for children, like the Viking Ship and Little Tykes, just to name a few, have raised funds for years by selling these pickle cards, and found out to their surprise in the spring of 1990, nearly 4 years after the new tax had been levied, that they in fact have been subjected to the tax for several years.

As a result, we found out in the spring of 1990 that many of these char-

ities owed large amounts of back taxes, penalties and interest. We have many charitable groups in eastern Nebraska that owe tens of thousands of dollars in back taxes, penalties and interest. Some are threatened with bankruptcy.

The over 200 charities in Nebraska, that have been affected by this have subject to confusing changes in the law and inconsistent enforcement by the Internal Revenue Service. A lot of volunteers who have given enormous amounts of time to these organizations are trying to figure out exactly what they owe and how to react to the notices from the Internal Revenues Service that these very large amounts are due.

It is important that we get this straightened out for the sake of these charities. This particular bill does that in part by repealing the tax prospectively for charities which engage in this low stakes fundraising gaming, and where that gaming is made legal by State law.

Let me just briefly summarize the recent changes in the law that have resulted in this unfavorable situation.

In 1978, Congress created the bingo exemption, which allows nonprofit charitable organizations which qualify for 501(c) tax exempt status, to conduct bingo games to raise funds.

In 1984, Congress decided that charities should be allowed to raise funds through games of chance other than bingo without being subject to taxation. The tax exemption was granted only if State law allowed nonprofit organizations, and only nonprofit organizations, to conduct such games, if such State law prohibited for-profit organizations from conducting such games. If state laws did not allow it, then the tax exemption did not apply.

Then in 1986 a technical correction was added to the 1986 Tax Reform Act. We are still somewhat bewildered today as to the origin of this technical correction. But what it did was repeal the tax exemption for nonprofit charities in all States except North Dakota.

In 1988 Congress responded to this problem by reducing back tax liability by changing the effective date after which such games could be taxed up to the date of the 1986 change in the law.

When we found out about it in the spring of 1990, Senator EXON and Senator KERREY from Nebraska introduced legislation in the Senate and I introduced legislation in the House designed to remedy the situation.

Congress has elsewhere recognized that the long-standing tradition of charitable gaming does not constitute an unrelated activity of the charity for taxable purposes. Many charities use games, like Friday night bingo, as a way to raise funds for community projects. Gaming encourages people to make contributions, and also introduces an element of fun and a feeling of participation. The games may be raffles, bingo games, pull-tab games such as pickle cards in Nebraska, or other variations depending on local custom and law. The bingo exemption, the expanded 1984 exemption, and the 1988 reduction of liability all indicate that Congress recognizes that these games raise funds for valuable activities in our communities.

IRS POLICY INCONSISTENT

It is not clear that the record of IRS enforcement has been consistent. It appears to vary form State to State. For instance, in Nebraska they tax the charities who sell pickle cards through State licensed operators whose commission is fixed by the State, allegedly because it constitutes a business. In Maryland, however, IRS appears to be mounting a far more extensive challenge, asserting that the games of chance of whatever kind, whether conducted by volunteers or not, whether all the proceeds go to charity or not, are unrelated to the tax exempt function, and therefore taxable.

I have asked the IRS to clarify its position on these issues. The Service is conducting a review of policy towards tax-exempt organizations, as well as reviewing these issues in particular. Fortunately, enforcement activities against Nebraska charities have been held pending the review.

This bill will resolve these doubts. This bill is consistent with the direction Congress has been moving in and obviates the North Dakota special exception.

DISCOURAGES PROFESSIONAL GAMBLING

We recognize and share the concerns of Members who do not want professional gamblers to come in and take advantage of charitable status, either by manipulating legitimate charities or establishing fraudulent charities. We have included a provision that would exclude from the tax exemption games in which a substantial part of the work is conducted by people whose principal occupation is running gambling operations.

The bill also does not supersede any State law. Games conducted in violation of State or local law are explicitly excluded form the tax exemption. We have tried to strike a balance between the legitimate and traditional activities that the community accepts and exclude anyone who would abuse this fundraising privilege.

H.R. 5660 will allow those thousands of community organizations across the country in those states which allow it to continue the tradition of charitable giving to their nonprofit organizations through low-stakes games of chance. I urge my colleagues to vote "yes."

Mr. Speaker, let me just say in conclusion that it really makes a great deal of sense for us to do that so that nonprofit organizations, including religious organizations that have traditionally raised funds in this fashion can continue those operations. It is a good bill and I would urge my colleagues to enact it.

Mr. BILBRAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is kind of hard to fight against this bill. The gentleman has talked about the Catholic Church, which I am a member of, the Knights of Columbus, which I am a member of, and the Jaycees, which I am a former member of. The only organization I am not a member of is a volunteer fire department, coming from an urban area. So I guess I am opposing three out of the four groups I belong to.

Mr. Speaker, this measure at first glance seems not a controversial piece of legislation. It proposes to exclude games of chance conducted by nonprofit organizations from the definition of unrelated trade or business. However, when one looks closely at this bill and how it is being paid for, it should never have been on the suspension calendar.

When the legislation was considered in the Committee on Ways and Means, no source of revenues were proposed to offset the cost, which is $100 million.

So where did they find the revenues? H.R. 5660 proposes to increase the withholding on certain gaming winnings from 20 to 28 percent. Under current law, proceeds from a wagering transaction are subject to withholding at a rate of 20 percent if such proceeds exceed $1000.

In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent if such proceeds exceed $5,000. Under H.R. 5660, the withholding tax will rise to 28 percent. This provision will cover the State lotteries in 32 States and the District of Columbia. In fact, I am amazed that Members from those States that have state-conducted lotteries are not here really inquiring what this will do. Will this discourage people from buying lottery tickets, the proceeds of which are also used for educational purposes, used for public works projects in those States, and they are a very vital need and actually create a lot of good in those States that have these kinds of lotteries, and help with the deficits that so many of these States are having?

If people know that nearly one-third of that revenue is going to be taken out and withheld from them, I think a lot of people will be discouraged from buying those tickets. They also do very, very worthy charitable works and educational programs within those States.

The main beneficiaries of this bill are the numerous nonprofit organizations, such as volunteer fire departments that run Las Vegas Nights several times a week.

While I do not disagree with the efforts of the fire departments to raise funds to help the citizens of their communities, it should not be at the ex-

pense of the legal gaming industry, for several reasons.

One would think that these Las Vegas Nights are small time mom and pop events. This is hardly the case. Just last week in the Washington Post was an advertisement by a volunteer fire department in the State of the gentleman from Maryland [Mr. HOYER], advertising, "Casino Nights: Caribbean stud poker, $1,000 bonus; $1,000 royal high hand every two hours; roulette; poker; blackjack; free food."

Mr. Speaker, if you would ask the gentleman from Maryland [Mr. HOYER] what kind of liabilities these people have brought up, they are in the millions of dollars. These are not nights that the local Catholic charity is having bingo or something and raising $2,000, $3,000, or maybe even $5,000 to help their local Catholic school or to help some senior group. This is big business. These are big events. They are well-run, they are well-financed, and they make immense profits. Those are the people crying.

Mr. Speaker, this bill is not retroactive. The gentleman from Nebraska [Mr. HOAGLAND] said some of the churches are facing bankruptcy because of these tremendous liabilities. This does not remove, as I understand the bill, any of that liability. This does not take away the penalty that they had in the past, the interest that has accrued, and the taxes that were not paid. So this bill does not save those churches in those groups tens of thousands of dollars.

The Knights of Columbus that owe over $1 million in the district of the gentleman from Maryland [Mr. HOYER] are not going to be saved that way. They have to pay it. The volunteer fire department that owes nearly $2 million has to pay it. It is just removing all future liability. Those penalties and interest would not be there if these people had paid them timely.

Mr. Speaker, I sympathize that these people did not read the 1986 Tax Code. I can say I was not here and did not vote on the 1986 Tax Code. I was not part of that fiasco. Therefore, a lot of people have been hit with high taxes and interest and so forth because they did not read the code and did not know what was going on.

Mr. Speaker, second, it is very important that by adding more taxes on the legal gaming industry and doing these things, like I said, you get people that do not want to participate. Maybe some people feel that is great, that maybe they should not participate in the lotteries, maybe they should not participate in legalized gambling. But the fact is there are illegal operations going on all over this country that are not paying their fair share of taxes. We should be going out and encouraging the IRS and Justice Department to find these people and collect their taxes from them. I think we could raise a lot more than $100 million a year. We would raise hundreds of millions of dollars a year in additional money.

□ 1250

I urge that we look at this measure very closely, that we understand what it does. And then those Members out there that have States that have legalized lotteries, this is going to hurt them. It is going to cut back the take that they are receiving on those lotteries. Because people, if they look and they find out that they are going to have withheld from their taxes a good portion of that tax, of that winning, if they have a big winning, it is going to be very detrimental.

I urge that on this motion the Members here vote no when the voice vote comes in a few minutes.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. MONTGOMERY]. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5660, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CLARIFYING TAX TREATMENT OF INTERMODAL CONTAINERS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5674) to clarify the tax treatment of intermodal containers, to revise the tax treatment of small property and casualty insurance companies, and for other purposes.

The Clerk read as follows:

H.R. 5674

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TAX TREATMENT OF CERTAIN CARGO CONTAINERS

SEC. 101. TREATMENT OF CERTAIN CARGO CONTAINERS.

(a) GENERAL RULE.—A qualified intermodal cargo container shall be treated as property described in section 48(a)(2)(B)(v) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

(b) QUALIFIED INTERMODAL CARGO CONTAINER.—

(1) GENERAL RULE.—For purposes of this section, the term "qualified intermodal cargo container" means any intermodal cargo container of a United States person which, after being placed in service, at all times during the taxable year either—

(A) is subject to a qualifying lease, or

(B) is being—

(i) held for lease,

(ii) moved for purposes of leasing or being available for lease, or

(iii) maintained or repaired for subsequent lease,

by the taxpayer, a lessee or agent of the taxpayer or any other person.

(2) DEFINITIONS.—For purposes of this subsection—

(A) QUALIFYING LEASE.—The term "qualifying lease" means—

(i) any lease to a container user that has one or more trade routes that contact the United States, or

(ii) any short-term lease to a container user.

(B) CONTAINER USER.—The term "container user" means—

(i) a person that is in the business of using intermodal cargo containers to ship or transport cargo for other persons, or

(ii) with respect to an intermodal cargo container, a person that uses the container to ship or transport its own cargo.

(C) U.S. TRADE ROUTES.—A container user shall be deemed to have one or more trade routes that contact the United States if at any time during the taxable year such person—

(i) owns, operates, or charters any vessel that receives or delivers any intermodal cargo container in the United States, or

(ii) uses any intermodal cargo container to ship cargo to or from the United States.

(D) SHORT-TERM LEASE.—The term "short-term lease" means—

(i) any lease the stated term of which is not more than 50 percent of the class life (within the meaning of section 168(i)(1) of the Internal Revenue Code of 1986) of the container, and

(ii) any lease under a lease agreement under which the lessee is not required to use or hold the container for a specified term.

(E) LEASE.—The term "lease" means lease or sublease.

SEC. 102. NO INFERENCE.

No inference shall be drawn from this title as to the application of section 48(a)(2)(B)(v) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) or section 168(g)(4)(E) of the Internal Revenue Code of 1986 to containers that are not qualified intermodal cargo containers or to containers placed in service after December 31, 1989.

SEC. 103. REVOCATION OF PRIOR ELECTION.

(a) GENERAL RULE.—Any election made under Internal Revenue Service Revenue Procedure 90-10 prior to the date of enactment of this Act may be revoked without the consent of the Secretary of the Treasury or his delegate. An election revoked under this section shall be treated as never having been made.

(b) TIME AND MANNER OF REVOCATION.—Any revocation under subsection (a) shall be made within 180 days after the date of enactment of this Act by filing with the Secretary of the Treasury or his delegate—

(1) a statement describing the election being revoked and indicating that the election is revoked, and

(2) an amended return consistent with such revocation.

SEC. 104. EFFECTIVE DATE.

(a) GENERAL RULE.—Section 101 shall apply to all intermodal cargo containers placed in service before January 1, 1990.

(b) REVOCATION OF ELECTION.—Section 103 shall take effect on the date of the enactment of this Act.

TITLE II—OTHER PROVISIONS

SEC. 201. DEDUCTION FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 832(c) of the Internal Revenue Code of 1986 is amended by

striking "and" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(14) the small insurance company deduction allowed under subsection (h)."

(b) SMALL INSURANCE COMPANY DEDUCTION DEFINED.—Section 832 of such Code is amended by adding at the end thereof the following new subsections:

"(h) SMALL INSURANCE COMPANY DEDUCTION.—

"(1) IN GENERAL.—The small insurance company deduction allowed under this subsection for any taxable year is the applicable deduction percentage of so much of the tentative taxable income for such taxable year as does not exceed $3,000,000.

"(2) PHASEOUT BETWEEN $3,000,000 AND $15,000,000.—The amount of the small insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by the applicable phaseout percentage of so much of the tentative taxable income for such taxable year as exceeds $3,000,000.

"(3) PERCENTAGES.—For purposes of this subsection—

In the case of taxable years beginning in calendar year:	The applicable deduction percentage is:	The applicable phaseout percentage is:
1992	0	0
1993	0	0
1994	3	0.75
1995	7	1.75
1996	9	2.25
1997 and thereafter	15	3.75

"(4) SMALL INSURANCE COMPANY DEDUCTION NOT ALLOWABLE TO COMPANY WITH ASSETS OF $500,000,000 OR MORE.—

"(A) IN GENERAL.—The small insurance company deduction shall not be allowed for any taxable year to any insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

"(B) ASSETS.—For purposes of this paragraph, the term 'assets' means all assets of the company.

"(C) VALUATION OF ASSETS.—For purposes of this paragraph, the amount attributable to—

"(i) real property and stock shall be the fair market value thereof, and

"(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

"(D) SPECIAL RULE FOR INTERESTS IN PARTNERSHIPS AND TRUSTS.—For purposes of this paragraph—

"(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

"(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

"(i) TENTATIVE TAXABLE INCOME.—For purposes of subsection (h)—

"(1) IN GENERAL.—The term 'tentative taxable income' means taxable income determined without regard to the small insurance company deduction.

"(2) EXCLUSION OF ITEMS ATTRIBUTABLE TO NONINSURANCE BUSINESSES.—The amount of the tentative taxable income for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

"(3) NONINSURANCE BUSINESSES.—

"(A) IN GENERAL.—The term 'noninsurance business' means any activity which is not an insurance business.

"(B) CERTAIN ACTIVITIES TREATED AS INSURANCE BUSINESSES.—For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

"(i) it is of a type traditionally carried on by insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

"(ii) it involves the performance of administrative services in connection with plans providing property or casualty insurance benefits.

"(j) SPECIAL RULE FOR CONTROLLED GROUPS.—

"(1) SMALL INSURANCE COMPANY DEDUCTION DETERMINED ON CONTROLLED GROUP BASIS.—For purposes of subsections (h) and (i)—

"(A) all insurance companies which are members of the same controlled group shall be treated as 1 insurance company, and

"(B) any small insurance company deduction determined with respect to such group shall be allocated among the insurance companies which are members of such group in proportion to their respective tentative taxable incomes.

"(2) NONINSURANCE MEMBERS INCLUDED FOR ASSET TEST.—For purposes of subsection (h)(4), all members of the same controlled group (whether or not insurance companies) shall be treated as 1 company.

"(3) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means any controlled group of corporations (as defined in section 1563(a)).

"(4) ADJUSTMENTS TO PREVENT EXCESS DETRIMENT OR BENEFIT.—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 202. PENALTY FREE WITHDRAWALS FROM ANNUITIES FOR HIGHER EDUCATION EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(q) of the Internal Revenue Code of 1986 (relating to 10-percent penalty for premature distributions from annuity contracts) is amended by striking "or" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ", or", and by inserting after subparagraph (J) the following new subparagraph:

"(K) which is a qualified higher education expense distribution (as defined in paragraph (4))."

(b) QUALIFIED HIGHER EDUCATION EXPENSE DISTRIBUTION.—Subsection (q) of section 72 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) QUALIFIED HIGHER EDUCATION EXPENSE DISTRIBUTION.—

"(A) IN GENERAL.—For purposes of paragraph (2)(K), the term 'qualified higher education expense distribution' means any distribution from a designated higher education expense annuity to the taxpayer if such distribution is used within 90 days of the date of the distribution to pay qualified tuition and related expenses (as defined in section 117(b)) required for the enrollment or attendance of such taxpayer, the taxpayer's spouse, or a child (as defined in section 151(c)(3)) or grandchild of such taxpayer at an eligible educational institution (as defined in section 135(c)(3)); except that such expenses shall be reduced by any amount excluded from gross income under section 135 by reason of such expenses.

"(B) DESIGNATED HIGHER EDUCATION EXPENSE ANNUITY.—

"(i) IN GENERAL.—The term 'designated higher education expense annuity' means any annuity purchased after December 31, 1992, and designated for purposes of this paragraph by the purchaser at the time of purchase as an annuity to which this paragraph applies.

"(ii) CERTAIN ANNUITIES RECEIVED IN AN EXCHANGE NOT ELIGIBLE.—Such term shall not include any annuity acquired in an exchange to which section 1035 applies unless the annuity given up by the taxpayer in the exchange was a designated higher education expense annuity."

(c) GIFT TAX TREATMENT.—Subsection (e) of section 2503 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF PREMIUMS PAID UNDER DESIGNATED HIGHER EDUCATION EXPENSE ANNUITIES.—

"(A) IN GENERAL.—Any premium paid for a designated higher education expense annuity shall not be treated as transfer of property by gift for purposes of this chapter.

"(B) RECAPTURE RULES.—If any premium paid by any person for a designated higher education expense annuity is not treated as a taxable gift solely by reason of subparagraph (A)—

"(i) LIFETIME DISTRIBUTIONS NOT USED FOR EDUCATIONAL PURPOSES.—Any disqualified lifetime distribution from the portion of any annuity attributable to such premium shall be treated as a transfer by gift by such person.

"(ii) INCLUSION IN GROSS ESTATE.—The gross estate of such person shall include the value (as of the date of the decedent's death or applicable valuation date set forth in section 2032) of the portion of any annuity attributable to such premium.

"(C) DISQUALIFIED LIFETIME DISTRIBUTION.—For purposes of subparagraph (B), the term 'disqualified lifetime distribution' means any distribution which is not a qualified higher education distribution and which is made during the life of the person referred to in subparagraph (B) to or for the benefit of another person.

"(D) OTHER DEFINITIONS.—For purposes of this paragraph, the terms 'designated higher education expense annuity' and 'qualified higher education expense distribution' have the respective meanings given such terms by section 72(q)(4)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

SEC. 203. REPEAL OF STOCK FOR DEBT EXCEPTION IN DETERMINING INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) IN GENERAL.—Subsection (e) of section 108 of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraph (10) and redesignating paragraph (11) as paragraph (10), and

(2) by amending paragraph (8) to read as follows:

"(8) INDEBTEDNESS SATISFIED BY CORPORATION'S STOCK.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock transferred after July 9, 1992, in satisfaction of any indebtedness.

(2) EXCEPTION.—The amendments made by this section shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before July 9, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from Michigan [Mr. VANDER JAGT].

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5674 was sponsored by a distinguished member of the Ways and Means Committee, Mr. VANDER JAGT, to accomplish a number of worthwhile tax changes.

First, it would clarify the proper tax treatment of intermodal containers used in the transport of goods to and from the United States. This clarification is necessary to undo the harm to numerous taxpayers caused by a 1990 Internal Revenue Service ruling on the investment tax credit. That ruling reversed practices relied on by taxpayers since 1962 when the investment tax credit became available.

Second, the bill would promote education savings by eliminating the penalty tax on premature withdrawals from certain annuities which are specially designated as education savings annuities.

Third, the bill contains a provision which would provide a special deduction for small property and casualty insurance companies to give those companies treatment similar to that accorded to small life insurance companies.

This deduction would encourage the growth of surplus of small companies, thereby increasing the competitive balance in the property and casualty industry, and could help to prevent another coverage crisis such as we suffered in the mid-1980's.

To raise offsetting revenue for these changes, the bill would repeal the rule that gives special treatment to exchanges of stock for debt in bankrupt and insolvent corporations.

Mr. MATSUI. Mr. Speaker. I rise today in support of H.R. 5674, a bill which contains two measures of which I was an original cosponsor; a clarification of the proper tax treatment of intermodal cargo containers and tax relief for small property and casualty companies.

Title I of H.R. 5674 contains legislation that I have been working on for several years which addresses the investment tax credit and accelerated depreciation provisions of the Internal Revenue Code as applied to intermodal containers. In general, the credit and accelerated depreciation deductions would be allowed under this proposal for containers placed in service by U.S. lessor prior to January 1, 1991 and which were or are leased to container users such as shipping companies that have trade routes that touch the United States.

This proposal is intended to resolve a controversy which has affected the entire leasing community since the mid-1980's when the IRS began to change its interpretation of the provision applying the credit and depreciation to containers. Prior to the mid-1980's, domestic container lessors claimed the credit and deductions on substantially all of their containers. This practice was consistently confirmed in tax audits.

After 20 years of such practice, the IRS suddenly began to disallow the credit and deductions because the lessors could not prove specifically which containers entered or left a U.S. port each year—a tall order when such proof had never before been required. This approach was formalized in a revenue ruling in January 1990, and that ruling now requires the container owner to trace each container's activity to document that it is used substantially in transportation to and from the United States.

The most egregious part about this revenue ruling is that it is being retroactively applied, in some cases back as far as 1974. Such retroactive application is not only unfair, but practicably impossible to comply with. The alternative safe harbor offered to electing companies in the revenue ruling regards them with only slightly more than half of the credits claimed by container lessors in prior years.

The bottom line here is that a whole industry now faces the unpalatable options of entering into protracted and costly litigation, or accepting the half-a-loaf offered by the Service. Neither alternative is acceptable.

Title I provides a standard which would confirm the long-standing practices of the U.S. container leasing industry by overruling the Service's 1990 revenue ruling, and I strongly support its enactment.

Equally important, Mr. Speaker, is title II of H.R. 5674 which provides shall property and casualty companies with a deduction which is currently only available to small life insurance companies. The deduction was granted to small life insurance companies in 1984 on the theory that small companies in early stages of development need help getting through the startup phase. The theory is particularly applicable in the insurance industry where the well-established companies are so large.

In the property and casualty industry, as in many other industries, competition is enhanced by the existence of smaller companies. The small property and casualty companies often provide much needed coverage in times of crisis when coverage is otherwise unavailable, as was the case in the mid-1980's when there was a coverage shortage period.

Small companies also provide an important check on the industry. They provide the much needed competitive balance which helps to keep premium costs from escalating unnecessarily.

The enactment of the Tax Reform Act of 1986 included provisions which dramatically increased the tax burden of small property and casualty companies. Those changes have brought Treasury double the revenues estimated, but much of that tax burden has impacted the ability of small companies to be formed, grow, and compete with the larger companies. The double whammy is that they cannot even compete against small general insurance companies because the latter have this deduction that small property and casualty companies do not have.

Enactment of title II is important because it will level the playing field between all small insurance companies, and it will allow small companies to form and grow and thereby provide a check on the premium costs and activities of the larger companies.

Mr. Speaker, I urge my colleagues to vote in favor of H.R. 5674.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5674.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RESTORING PRIOR LAW TREATMENT OF CORPORATE REORGANIZATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5655) to amend the Internal Revenue Code of 1986 to restore the prior law treatment of corporate reorganizations through the exchange of debt instruments, and for other purposes.

The Clerk read as follows:

H.R. 5655

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTORATION OF PRIOR LAW TREATMENT OF CORPORATE REORGANIZATIONS THROUGH EXCHANGE OF DEBT INSTRUMENTS.

(a) IN GENERAL.—Subsection (a) of section 1275 of the Internal Revenue Code of 1986 (relating to original issue discount special rules) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) Special rule for determination of issue price in case of exchange of debt instruments in reorganizations.—

"(A) In General.—If—

"(i) any debt instrument is issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) for another debt instrument (hereinafter in this paragraph referred to as the 'old debt instrument'), and

"(ii) the amount which (but for this paragraph) would be the issue price of the debt

instrument so issued is less than the adjusted issue price of the old debt instrument, then the issue price of the debt instrument so issued shall be treated as equal to the lesser of the stated principal amount of the debt instrument so issued or the adjusted issue price of the old debt instrument.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) DEBT INSTRUMENT.—The term 'debt instrument' includes an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—

"(I) IN GENERAL.—The adjusted issue price of the old debt instrument is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(7) or (b)(4) of section 1272 (or corresponding provisions of prior law)).

"(II) SPECIAL RULE FOR APPLYING SECTION 163(e).—For purposes of section 163(e), the adjusted issue price of the old debt instrument is its issue price, increased by any original issue discount previously allowed as a deduction."

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 108(e)(11) of such Code (relating to issue price) is amended by striking "1273 and 1274" and inserting "1273, 1274, and 1275".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act, in satisfaction of any indebtedness.

SEC. 2. INCREASE IN MILEAGE REQUIREMENT FOR DEDUCTION FOR MOVING EXPENSES.

(a) GENERAL RULE.—Paragraph (1) of section 217(c) of the Internal Revenue Code of 1986 (relating to condition, for allowance) is amended by striking "35 miles" each place it appears and inserting "60 miles".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY], the author of this legislation.

Mr. MOODY. Mr. Speaker, H.R. 5655, introduced by Mr. MCGRATH and myself, restores the pre-OBRA 1990 tax treatment of exchanges of corporate debt instruments. An exchange in this context merely means renegotiating the terms of an existing outstanding debt—either by switching the interest rate, the length, or any other terms of the instrument.

Only two years ago OBRA 1990 levied a tax on the phantom income—called cancellation of indebtedness income, or COD—created by such an exchange unless the exchange takes place in bankruptcy. That is the fatal flow of this OBRA 1990 provision. It encourages bankruptcy.

The goal of H.R. 5655 is to facilitate debt workouts without forcing debtor firms into bankruptcy. Bankruptcy hurts creditors, debtors, consumers, investors, and, most importantly, the firms' workers.

Bankruptcy also increases transaction costs, such as lawyer's fees, financing costs, etc., and results in tremendous uncertainties to all concerned. The social costs of bankruptcy—in terms of laid off workers, broken lives, unemployment, etc.—are even greater.

Healthy companies are able to refinance their debts to take advantage of lower interest rates without any tax consequences by simply going to the marketplace for new loans. Ironically, it is only troubled companies who are unable to take advantage of lower rates by renegotiating existing debts without triggering significant tax payments.

The New York Bar Association and the American Bar Association tax section both support the changes advocated by the Moody-McGrath bill.

Finally, a recent appeals court decision makes it clear that the face value of exchanged debt is what is important in determining the debtor's liability, not the face interest rate. Court law now holds that the phantom income concept is not good bankruptcy law, and supports the bill's premiss that there is no legal reduction of indebtedness. Therefore, no tax on cancellation of indebtedness should apply.

In sum, this legislation allows businesses that are in trouble to work their way out without going into bankruptcy and destroying jobs and lives.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Ways and Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5655.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SOCIAL SECURITY AND SUMMER CAMP COUNSELORS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5656) to amend the Internal Revenue Code of 1986 to exempt services performed by full-time students for seasonal children's camps from social security taxes, and for other purposes.

The Clerk read as follows:

H.R. 5656

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SERVICES PERFORMED BY FULL-TIME STUDENTS FOR SEASONAL CHILDREN'S CAMPS EXEMPT FROM SOCIAL SECURITY TAXES.

(a) IN GENERAL.—Subsection (b) of section 3121 of the Internal Revenue Code of 1986 (defining employment) is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(21) service performed by a full time student (as defined in section 3306(q)) in the employ of an organized children's camp—

"(A) is such camp—

"(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(ii) had average gross receipts for any 6 months in the proceeding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year, and

"(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

(b) CONFORMING AMENDMENT.—Subsection (a) of section 210 of the Social Security Act is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(21) Service performed by a full time student (as defined in section 3306(q) of the Internal Revenue Code of 1986) in the employ of an organized children's camp—

"(A) if such camp—

"(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year, and

"(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid on or after October 1, 1993.

SEC. 2. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER SECTION 403(b).

In the case of any contract purchased in a plan year beginning before January 1, 1993, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY], the author of this bill.

Mr. MOODY. Mr. Speaker, this legislation cosponsored by Representatives GUY VANDER JAGT and BARBARA KENNELLY, has two parts:

First, it extends FICA tax exemptions to full-time students employed in children's summer camps and their employers; and

Second, it ensures that the employees of Indian tribes that have set up certain deferred compensation pension plans have the same protections as 501(c)(3) tax-exempt organizations.

I. FICA EXEMPTION FOR CAMP COUNSELORS

The first part of the bill ensures that full-time students that work as summer camp counselors, and their employers, are not subject to FICA taxes.

This is consistent with a series of other laws that recognize the special status of camp counselors. They are exempt from minimum wage laws and the unemployment tax system, for example.

Moreover, full-time students that are employed by their colleges and universities are already exempt from FICA taxes. As a result, full-time student employees of the type this bill would cover who work in school-sponsored camps are already exempt. Most 4-H camps, for example, fit into this category.

It is not fair to exempt from FICA tax one group of people who are doing exactly the same work while taxing the others merely by virtue of the sponsorship of the camps.

Over 65 percent of the camps this bill would cover are run by nonprofits such as Girl Scouts, Christian Camping International/USA, the Easter Seal Society, Camp Fire Boys and Girls, the YMCA, and numerous other similar organizations. They will be able to use the savings of this bill to attract better staff and provide better programming for the youth of America—often disadvantaged and minority youth who need this experience the most.

II. INDIANS' PENSIONS

The second provision of this bill concerns several Indian tribes around the Nation that have set up deferred compensation pension plans for their employees under a provision of the Tax Code designed to help nonprofits set up these plans.

Unfortunately, the U.S. Tax Code specifies that such deferred compensation pension plans are eligible for statutorily exempt organizations, that is, organizations exempt by virtue of 501(c)(3) provisions. But Indian tribes are tax exempt by virtue of Federal treaties and case law, not statute by virtue of section 501(c)(3).

This bill would extend this same tax-exempt status to these existing tribal plans. They have acted in good faith and in accord with our policy to encourage pension savings. They should not be subject to tax.

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Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5656.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TREATMENT OF CERTAIN GAINS AND LOSSES OF FARMER COOPERATIVES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5650) to amend the Internal Revenue Code of 1986 to allow nonexempt farmer cooperatives to elect patronage-sourced treatment for certain gains and losses, and for other purposes.

The Clerk read as follows:

H.R. 5650

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CERTAIN GAINS AND LOSSES OF FARMER COOPERATIVES.

(a) GENERAL RULE.—Section 1388 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsection:

"(k) TREATMENT OF GAINS OR LOSSES ON THE DISPOSITION OF CERTAIN ASSETS.—For purposes of this title, in the case of any organization to which part I of this subchapter applies—

"(1) IN GENERAL.—An organization may elect to treat gain or loss from the sale or other disposition of any asset (including stock or any other ownership or financial interest in another entity) as ordinary income or loss and to include such gain or loss in net earnings of the organization from business done with or for patrons, if such asset was used by the organization to facilitate the conduct of business done with or for patrons.

"(2) ALLOCATION.—An election under paragraph (1) shall not apply to gain or loss on the sale or other disposition of any asset to the extent that such asset was used for purposes other than to facilitate the conduct of business done with or for patrons. For purposes of this paragraph, the extent of such use may be determined on the basis of any reasonable method for making allocations of income or expense between patronage and nonpatronage operations.

"(3) PERIOD OF ELECTION.—An election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the organization. Any such revocation shall be effective for taxable years beginning after the date on which notice of the revocation is filed with the Secretary.

"(4) ELECTION AFTER REVOCATION.—If an organization has made an election under paragraph (1) and such election has been revoked under paragraph (3), such organization shall not be eligible to make an election under paragraph (1) for any taxable year before its 3rd taxable year which begins after the 1st taxable year for which such revocation is effective, unless the Secretary consents to such election.

"(5) NO INFERENCE.—Nothing in this subsection shall be construed to infer that a change in the law is intended for organizations not having in effect an election under paragraph (1). Any gain or loss from the sale or other disposition of any asset by such organization shall be treated as if this subsection had not been enacted."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to dispositions after the date of the enactment of this Act.

SEC. 2. TREATMENT OF CERTAIN HIGH YIELD DISCOUNT OBLIGATIONS.

(a) GENERAL RULE.—Paragraphs (1)(A) and (2)(A) of section 163(i) of the Internal Revenue Code of 1986 (relating to applicable high yield discount obligations) are each amended by striking "5 years" and inserting "4 years".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to instruments issued after the date of the enactment of this Act.

SEC. 3. TREATMENT OF INTEREST ON RESERVES OF LIMITED EQUITY HOUSING CO-OPERATIVES.

(a) GENERAL RULE.—Section 277 of the Internal Revenue Code of 1986 (relating to deductions incurred by certain membership organizations in transactions with members) is amended by adding at the end thereof the following new subsection:

"(c) TREATMENT OF INTEREST ON RESERVES OF LIMITED EQUITY HOUSING CORPORATIONS.—

"(1) IN GENERAL.—For purposes of subsection (a), any interest received by a limited equity housing corporation on reasonable reserves established in connection with such corporation (including reserves required by a government agency or lender) shall be treated as income derived by such corporation from transactions with members.

"(2) LIMITED EQUITY HOUSING CORPORATION.—For purposes of paragraph (1), the term 'limited equity housing corporation' means any cooperative housing corporation (as defined in section 216(b)(1)) with respect to which the requirements of section 143(k)(9)(D)(i) are met."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from North Dakota [Mr. DORGAN], so I yield myself such time as I may consume and I yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, I think Chairman GIBBONS has almost explained it. It is as simple as it sounds. We have some confusion in the treatment of patronage source income for tax-exempt cooperatives, farmer cooperatives, and this bill adopts the same test that the courts have applied consistently to determine whether an item of income is so-called patronage source income.

The second portion of this legislation deals with housing co-ops, and it clarifies the rules governing the treatment of transactions involving interest earned by housing cooperatives on its reserves. The small amount of money that is required to pay for this is raised by changing a threshold on the issuers of junk bonds, traditionally called payment-in-kind bonds, in which taxpayers have deducted interest that they had not really paid because they had simply issued more bonds.

We had a 5-year threshold on that. This moves it to 4 years, which I think is good tax policy, and also, coincidentally, raises a small amount of money which is sufficient to pay for both of these provisions that would clarify the tax treatment for the farmers' cooperatives and also for the housing cooperatives.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill was not controversial in committee, and we have heard no objection since then. H.R. 5650 would allow farmer co-ops and low- and moderate-income housing co-ops to elect patronage dividend treatment in certain instances. Currently, some technical provisions in the Tax Code can create problems for these co-ops, and this bill would help alleviate some of those problems.

Mr. GRANDY. Mr. Speaker, I rise today in strong support of H.R. 5650 and urge its adoption by the House. H.R. 5650, introduced by Representative DORGAN and myself, has broad bipartisan support as evidenced by the 98 cosponsors on H.R. 2361, the basis for H.R. 5650, and the 54 cosponsors of the Senate version of this legislation.

Fundamentally, H.R. 5650 allows current tax practices to continue. Previous tax practice has allowed any of the over 5,100 farmer-owned cooperatives that sell an asset to treat the income from that sale as patronage-sourced—coming from an asset used for members—if the asset passes a test that it was "directly related to or facilitated business for or on behalf of its members." This test has been established and affirmed several times by the courts. If the asset was from mixed use—member and nonmember—then the income can be proportionately allocated. If the asset was purely nonmember related, then the income must be nonpatronage sourced.

Despite the consistent application of the patronage-source test by the courts and the test's establishment in Internal Revenue Service [IRS] regulations, the IRS continues to challenge the ability of farmer coops to make the election thereby causing cooperatives significant legal costs and adversely affecting their ability to make business decisions. H.R. 5650 prospectively seeks to remedy this situation by clearly establishing in law that cooperatives may elect to treat income as patronage-sourced if the sold asset meets the court-established test. Without the legislation, farmer coops will continue to be plagued by unnecessary, costly, and time-consuming litigation on the issue which wastes business resources as well as IRS resources.

Since this issue has been repeatedly and clearly ruled on by the courts, I would prefer that we were adopting H.R. 2361 today which provides for retroactive treatment for open tax years, but in the spirit of comity Representative DORGAN and I have amended that legislation to be prospective only. Finally, I want to emphasize that under H.R. 5650 no one is avoiding taxation, there is no room for manipulation, and it fundamentally and simply allows current tax practice, which is sensible and fair, to continue.

Mr. Speaker, I urge my colleagues to adopt H.R. 5650 and I look forward to its adoption into law.

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 5650, a bill affecting the taxation of cooperatives. This is a bill that modifies the rules for farm co-ops and limited equity housing co-ops. I have joined my colleague from North Dakota in cosponsoring this legislation because we both support one of the common threads that runs between rural and urban areas; the need for people to come together in cooperative arrangements to meet their needs. In the rural areas it is the farm co-op. In urban areas it is the housing co-op.

Currently co-operative housing corporations are in the midst of a vexatious litigation with the IRS over whether Internal Revenue Code section 277 applies to housing co-ops. The issue is whether the co-ops must consider their interest income from the reserves they keep patronage or nonpatronage income. The bottom lines is that if it is considered nonpatronage income that is, not from the members, the interest will be taxable. If it is patronage income the income will be offset by patronage deduction—depreciation on the building—and there will be no net income. If it is not patronage income as the IRS claims, then there will probably be no nonpatronage offsets and the co-op will have net income.

Many limited equity co-ops in New York City, where the co-operators are low- and moderate-income families, are required by the terms of their insured and HUD subsidized mortgages to keep a reserve. They earn interest on these reserves. The IRS has claimed that the co-ops owe taxes on this income. In many cases the IRS has made claims as high as $1,000 per family.

In my district alone there are 9,000 families living in limited equity co-ops.

To keep the revenue loss down the provisions of this bill do not apply to all housing co-ops. It will not apply to market rate co-ops on Park Avenue. It only applies to limited equity co-ops as defined in the Internal Revenue Code. These co-ops are generally only available to low- and moderate-income families and they usually do not allow the co-operator to make a profit on the sale of the co-operative stock.

This provision is designed to help keep the rents of these moderate- and low-income families down and allow them to own their own homes. The interest on the reserves is used to reduce the maintenance charges to the co-operators.

This bill is prospective because the retrospective cost is too great. The prospective cost is $12 million over 5 years. The bill is intended not to have any inference on the current litigation between the co-ops and the IRS. I want to add that an amendment providing the same relief as this bill that applied to all housing co-operatives, not just limited equity co-ops was included in H.R. 4210 as passed by Congress but vetoed by the President.

The same comprehensive amendment has been included in H.R. 11 as just reported by the Senate Finance Committee. I urge the passage of this bill.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5650.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TAX TREATMENT OF CERTAIN NONPROFIT ORGANIZATIONS PROVIDING HEALTH BENEFITS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5641) to amend the Internal Revenue Code of 1986 with respect to the treatment of certain nonprofit organizations providing health benefits, and for other purposes.

The Clerk read as follows:

H.R. 5641

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CERTAIN NONPROFIT ORGANIZATIONS PROVIDING HEALTH BENEFITS.

(a) GENERAL RULE.—Paragraph (2) of section 833(c) of the Internal Revenue Code (defining existing Blue Cross or Blue Shield organization) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, an organization shall be treated as a Blue Cross or Blue Shield organization if such organization is not a health maintenance organization and is organized under and governed by State laws which are specifically and exclusively

applicable to not-for-profit health insurance or health service type organizations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

SEC. 2. TREATMENT OF CERTAIN SECURITIES TRANSFERRED TO ESOP FROM TERMINATED PENSION PLANS.

Subsection (b) of section 7302 of the Revenue Reconciliation Act of 1989 is amended by adding at the end thereof the following new paragraph:

"(3) SECURITIES ACQUIRED PURSUANT TO SECTION 4980(c)(3).—The amendment made by this section shall not apply to employer securities acquired before October 1, 1989, pursuant to section 4980(c)(3) of the Internal Revenue Code of 1986 with assets transferred from a defined benefit pension plan the termination of which was the subject of a determination letter issued by the Internal Revenue Service which was in effect on August 4, 1989, and at all times thereafter before such securities were acquired."

SEC. 3. CLASSIFICATION OF CERTAIN INTEREST AS STOCK OR INDEBTEDNESS.

(a) GENERAL RULE.—Section 385 of the Internal Revenue Code of 1986 (relating to treatment of certain interests in corporations as stock or indebtedness) is amended by adding at the end thereof the following new subsection:

"(c) EFFECT OF CLASSIFICATION BY ISSUER.—

"(1) IN GENERAL.—The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—Paragraph (1) shall not apply to any holder of an interest if such holder on his return for the first taxable year during which he held such interest discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to instruments issued after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from New York [Mr. MCGRATH]. Therefore, I will defer to him to speak to this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is designed to clarify two provisions of the Tax Code and to prevent a recurring abuse.

The first section makes clear that certain not-for-profit health insurance organizations are eligible to receive a tax deduction granted under section 833 of the Internal Revenue Code. Some insurers were inadvertently omitted from this provision, which we enacted in 1986, when we took away their tax exempt status.

The second section of my bill cures an inequity caused by the 1989 changes in pension law and the slow Internal Revenue Service approval of filings required by the Tax Code. While waiting for IRS determination letters on changes in their retirement plans some companies were disadvantaged by a 1989 change we made in the law. The change penalized companies in the midst of transactions, which were legal and would have been completed but for lengthy IRS reviews.

The IRS ultimately approved the transactions, but the law was changed while the taxpayers were waiting. In one case, IRS action took over 9 months.

The result has been a serious burden on retirement plans of thousands of individuals.

The third section of my bill is intended to finance this bill and several others.

It will help prevent an illegal tax avoidance scheme known among practitioners as the debt-equity whipsaw. Issuers of stock or bonds and holders of those interests classify their interests differently to maximize tax advantages. Under my bill, issuers would be required to define the interest they are selling and holders would be bound by that designation for tax purposes.

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 5641 a bill introduced by Mr. MCGRATH.

This amendment is designed to allow GHI the same tax status as the Blue Cross and Blue Shield organizations.

The Tax Reform Act ended the tax exemption of Blue Cross and Blue Shield organizations. In its place it allowed the Blue Cross and Blue Shield organizations partial tax relief. They would have to pay about a 21-percent rate instead of a 34-percent rate on income equal to 3 months reserve and 34 percent on amounts in excess of that amount.

The problem is that the repeal of the tax exemption covered any tax exempt organization operating like the Blues, but the partial tax exemption specifically named the Blue Cross and Blue Shield organizations. The result is then GHI unintentionally lost its tax exemption, but received none of the new substitute tax exemptions.

GHI operates as a nonprofit just like a Blue Cross and Blue Shield organization. It is organized and regulated under New York State law exactly as the Blue Cross and Blue Shield organizations in the State are organized and regulated.

GHI has over 2.2 million insureds many of whom work for New York City and other governments. Many of the insureds are covered as a result of union-negotiated contracts.

GHI is making an extensive effort to provide community rating and open enrollment as is now required in New York.

This amendment should cost no more than about $1 million per year.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5641.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1310

TREATMENT OF CERTAIN PORT AUTHORITY BONDS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5659) to permit the simultaneous reduction of interest rates on certain port authority bonds.

The Clerk read as follows:

H.R. 5659

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CERTAIN PORT AUTHORITY BONDS.

(a) IN GENERAL.—In the case of bonds described in subsection (b)—

(1) the simultaneous reduction of interest rates on such bonds shall not affect the tax-exempt status of the interest on such bonds, and

(2) such bonds shall not be treated as arbitrage bonds under section 148 of the Internal Revenue Code of 1986 by reason of the failure to reduce interest rates on loans made with the proceeds of such bonds before the date of such simultaneous reduction.

(b) BONDS DESCRIBED.—The bonds described in this subsection are bonds issued—

(1) by or on behalf of a port authority created on August 17, 1932,

(2) pursuant to a resolution adopted on February 14, 1974, that established a common bond security fund program, and

(3) after September 3, 1980, and before May 30, 1991.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. VENTO], the sponsor of this bill.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today in support of my legislation, H.R. 5659, that will assist the St. Paul Port Authority. My thanks to Chairman ROSTENKOWSKI and the members of the Ways and Means Committee for permitting this legislation to be considered today in the House. Special thanks are due to the gentleman from Ohio [Mr. PEASE], my friend and colleague serving on the Ways and Means Committee, for placing this matter at my request before

the committee and carrying forward my concerns for the needs of St. Paul, MN, in an effective and credible manner.

This special legislation addresses a unique and urgent matter which is essential to the viability of the economy of St. Paul. I know of no opposition to this bill. This is a noncontroversial measure.

The St. Paul Port Authority's common revenue bond fund program consists of approximately 168 separate bond issues totaling over $332 million in outstanding bonds. These bonds have been issued over a period of 18 years, and have provided financing to industrial, residential, and commercial projects in the City of St. Paul and its immediately surrounding areas. The program has been the main industrial engine of the city of St. Paul, and has been responsible for creating and preserving over 38,000 industrial jobs over the past two decades.

Due to a number of factors, including a deterioration in the general economic conditions and the problem plaguing commercial properties generally, the reserves supporting these bonds, are at risk of being depleted in the year 2000. Unless this program is restructured, bonds maturing after that date would then be paid solely from project cash flow which without this change may not be sufficient to pay the principal and interest in the outyears.

The purpose of the measure being considered today, H.R. 5659, would eliminate technical restrictions that currently impede the St. Paul Port Authority's plan to restructure the common revenue bond program to avoid this potential default. The bill also allows the port authority to use the anticipated interest rate differential from reissuance and place such savings into the St. Paul Port Authority bond reserved fund to safeguard future payments to bond holders. The bill applies solely to St. Paul. We know of no other municipal bond issuer in a similar situation.

I would like to insert for the RECORD, a letter from the mayor of St. Paul and from the president of the St. Paul Port Authority regarding the necessity of this legislation.

Mr. Speaker, I urge my colleagues to support this bill. I thank the gentleman from Florida [Mr. GIBBONS] for the time and would be happy to yield for any questions.

The letter referred to follows:

CITY OF SAINT PAUL,
Saint Paul, MN, July 21, 1992.

Hon. BRUCE VENTO,
House of Representatives, Washington, DC.

Re: Port Authority of the city of Saint Paul Proposed Tax Law Change

DEAR CONGRESSMAN VENTO: I understand that you have been instrumental recently in helping the Port Authority of the City of Saint Paul to obtain federal tax law changes that would help with restructuring of its common revenue bond fund program.

Please know that the City of Saint Paul is very anxious that the Port Authority succeed in its proposed restructuring, so that it can continue to provide financing to industrial and other projects in the City of Saint Paul and its immediate surrounding areas. To date, the Port Authority's Common Revenue Bond Fund program has been responsible for creating and preserving over 38,000 industrial jobs which are very important to the City of Saint Paul.

Your efforts in helping the Port Authority achieve the federal tax law changes that it has proposed is very much appreciated, and your continued support for this proposal is respectfully requested.

Very truly yours,

Mayor JAMES SCHEIBEL.

PORT AUTHORITY OF THE
CITY OF SAINT PAUL,
St. Paul, MN, July 21, 1992.

Hon. BRUCE VENTO,
House of Representatives, Washington, DC.

Re: Port Authority of the City of Saint Paul Proposed Tax Law Change

DEAR CONGRESSMAN VENTO: As you know, the Port Authority is seeking some federal tax law changes as part of a proposed restructuring of its Common Bond Fund program. We understand that you have been instrumental in moving this proposed change forward, and want to thank you very much for your efforts.

As I am sure you have already been told, the Port Authority's Common Revenue Bond Fund program consists of approximately 168 separate bond issues, totalling $322,870,000 in outstanding bonds. These bonds have been issued over a period of 18 years.

Due to a number of factors, including a general deterioration in general economic conditions, the reserves supporting these bonds (currently funded at over $63,000,000) are likely to be depleted in the year 2000. Unless this program is restructured, bonds maturing after that date would then be paid solely from project cash flow. It is estimated that this cash flow will not be sufficient to pay the accruing interest much less the more than $200,000,000 in principal still outstanding at that date. In addition the Port Authority would no longer be able to fund economic recovery projects.

The adoption of the proposed federal tax legislation will eliminate technical restrictions that currently impede the Port Authority's plan to restructure the common revenue bond fund program to avoid this potential default, while at the same time resulting in a large present value reduction in tax exempt interest. This result is certainly beneficial to the treasury, while it also provides relief to the many holders of the Port Authority's common revenue bond fund program bonds, and finally, allows the Port Authority to continue to fund economic recovery projects.

For these reasons, we respectfully ask that you continue your full support of the proposed federal tax legislation. We stand ready to provide you with any additional information or help that you might need in this regard.

Very truly yours,

KENNETH R. JOHNSON,
President.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, The bill needs no further explanation. It was not deemed to be controversial when it was considered by the Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5659.

The question was taken; and (two-thirds having voted in favor thereof) the rules suspended and the bill was passed.

A motion to reconsider was laid on the table.

TREATMENT OF CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5644) to provide that certain costs of private foundations in removing hazardous substances shall be treated as qualifying distributions.

The Clerk read as follows:

H.R. 5644

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTION.

(a) IN GENERAL.—In the case of any taxable year beginning after the date of the enactment of this Act, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1986 shall be reduced (but not below zero) by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall only apply to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation by only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a nonconsensual judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recog-

nized for 20 minutes, and the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from Kentucky [Mr. BUNNING].

Mr. Speaker, I reserve the balance of my time.

Mr. BUNNING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to urge passage of H.R. 5644—a bill that I believe is noncontroversial and has been judged by the Joint Tax Committee to have a negligible revenue effect on the Treasury.

It is an issue that has been around for a while. Legislation similar to this has been adopted in the Senate three times and was the subject of a 1986 Select Revenue Subcommittee hearing here in the House.

The problem that this bill will correct involves a situation where a charitable foundation is bequeathed property that is later found to be the subject of a Superfund cleanup.

A good example is the Brown Foundation of Louisville, KY.

In 1969, the Brown Foundation was bequeathed the bulk of its assets under the will of James Graham Brown. Among these assets were several operating businesses, including three facilities which were engaged in the treatment of wooden poles with creosote and other chemicals in order to preserve them for extended use.

The foundation dissolved the wood treatment companies and liquidated the assets.

Nearly 15 years later the foundation was advised by the EPA of a hazardous cleanup problem at one of the sites.

The foundation, trying to fulfill its responsibility to the public health and welfare of the area surrounding the pole treatment facility entered into a voluntary consent order with the EPA to clean up the site. That cleanup is ongoing and the foundation is looking at two other sites that may need cleaning up.

Now the problem.

A charity must, by law, disburse a certain amount of money each year for so-called charitable purposes in order to maintain its nonprofit status. Section 4942 of the Internal Revenue Code requires a charity to annually disburse charitable payments which are qualifying distributions equivalent to at least 5 of the fair market value of its assets.

Unfortunately, the costs associated with the study and cleanup of a Superfund site do not qualify as qualified disbursements under section 4942 of the Internal Revenue Code.

As a result, the combination of the 5 percent requirement and the substantial cleanup costs that have been voluntarily assumed could result in the foundation seriously depleting its corpus.

This could not only threaten the ability of the foundation to support worthy charitable activities, in the future, but would also threaten the very existence of the foundation.

The bill I'm asking you to support, H.R. 5644 provides that study and cleanup expenditures, voluntarily assumed by a charitable foundation, would constitute a charitable payment for the purposes of the qualifying distribution requirement of section 4942 of the Code.

The provisions of the bill will only apply if the property in question was acquired and subsequently disbursed before the enactment of the Superfund law. Therefore, someone cannot set up a new foundation in order to evade their existing legal obligations under Superfund.

Furthermore, the bill is prospective in application and only applies to costs incurred after the date of enactment.

I truly believe that this legislation will aid environmental cleanup by encouraging charities, such as the Brown Foundation, to voluntarily assist the Government in cleaning of Superfund sites.

Also, this bill will ensure that good, worthwhile charities won't be forced out of business because they owned tainted property long before the enactment of Superfund.

I urge passage of the bill.

JAMES GRAHAM BROWN FOUNDATION, INC. CUMULATIVE GRANT HISTORY 1954–90

Organization:	Amount	Amount
Adults of the Community Organization		8,000
Alabama Baptist Children's Homes		35,000
Alabama Four-H Club Foundation, Inc.		100,000
Alabama Institute for Deaf and Blind Foundation, Inc		17,000
Alabama Sheriffs Boys and Girls Ranches, Inc.		180,600
Alabama Society For Crippled Children and Adults, Inc		20,000
Alice Lloyd College		775,000
American Cancer Society		67,500
American Cave Conservation Association, Inc		250,000
American Council of Young Political Leaders		2,000
American Printing House for the Blind, Inc		232,000
American Red Cross, Gulf Coast Region		30,000
American Red Cross, Louisville Area Chapter		1,078,849
American Red Cross, North Baldwin County Chapter		876
Arthritis Foundation, Alabama Chapter		25,000
Arthritis Foundation, Kentucky Chapter		20,000
Arts Center Association (Friends of the Water Tower)		75,000
Asbury College		350,000
Association for Retarded Citizens of Baldwin County		40,000
Auburn University		150,000
Baldwin County, Alabama		81,660
Baptist Hospital East		3,750
Bayside Academy		85,000
Beautification League of Louisville & Jefferson County		5,000
Behringer-Crawford Museum		50,000
Bellarmine College		5,488,070
Belle of Louisville Operating Board		35,000
Bellewood Presbyterian Home for Children		15,000
Berea College		404,000
Beth Haven Christian School		25,000
Better Business Bureau of Greater Louisville		20,000
Birmingham Southern College		275,000
Bishop State Junior College		50,000
Blue Coats of Louisville		1,000
Bound for Kentucky		1,000
Boy Scouts of America, Audubon Council		5,000
Boy Scouts of America, Black Warrior Council		176,000
Boy Scouts of America, Blue Grass Council		500
Boy Scouts of America, Dan Beard Council		50,000
Boy Scouts of America, Gulf Coast Council		68,700
Boy Scouts of America, Mobile Area Council		80,851
Boy Scouts of America, National Scouting Museum		250,000
Boy Scouts of America, Old Kentucky Home Council		1,291,500
Boy Scouts of America, Pine Burr Area Council		170,000
Boy Scouts of Tuscaloosa County, Alabama		25,200
Boys' Haven		33,750
Brescia College		885,000
Bridgehaven		171,000
Broadway Project Corporation		1,075,000
Brooklawn, Inc		75,000
Brown's Lane Christian School		34,000
Buckhorn College Association		8,500
Buechel Little League, Inc		600
Cabbage Patch Settlement House, Inc		25,000
Cain Center for the Disabled, Inc		50,000
Caledonia Cemetery Association		10,000
Camp Shenandoah		4,000
Campbell Lodge		50,500
Campbellsville College		325,000
Catholic Youth Organization		77,750
Cedar Lake Lodge, Inc		340,000
Central Presbyterian Church		4,500
Centre College		4,290,521
Century Club of Kentucky		1,000
Cerebral Palsy School		65,000
Children's Hospital Foundation, Inc. (Kosair)		452,000

	Amount
Choice, Inc.	25,000
City of Bancroft, Kentucky	6,100
City of Bay Minette, Alabama	594,166
City of Covington, Kentucky	10,000
City of Fairhope, Alabama	3,000
City of Fayette, Alabama	150,000
City of Hills and Dales, Kentucky	10,000
City of Live Oak, Florida	216
City of Louisville, Kentucky	419,000
City of Mobile, Alabama	35,000
City of Northport, Alabama	32,124
City of St. Matthews, Kentucky	1,150,000
Clark County Historical Society	7,000
Come-Unity Cooperative Care, Inc.	75,000
Coon Public Library	12,000
Council for Retarded Citizens of Jefferson Co., Kentucky	5,000
Council of Independent Kentucky Colleges & Universities	587,500
Crusade for Children	2,000
Cumberland College	1,125,000
Danville and Boyle County Fdn on Historic Preservation	31,000
Dare to Care!	70,000
The David School	75,000
De Paul School	875,200
Dessie Scott Children's Home	6,500
Dinsomore Homestead Foundation, Inc.	221,000
Diocesan Catholic Children's Home	270,000
Downtown Development Corporation	2,360,000
Drug Abuse Center	50,000
Druid City Hospital	100,000
Dumas Wesley Community Center	25,000
East End Boys Club, Inc	35,000
Environmental Alternatives, Inc	12,500
Episcopal Church Home and Infirmary	100,000
Exploreum, Inc	150,000
Eye Foundation, Inc	300,000
Family and Children's Agency, Inc	115,000
Farnsley-Moremen Historic Home, Inc	200,000
Faulkner University	400,000
Fayette County Memorial Library	50,000
Fifteen Telecommunications, Inc	359,000
Filson Club	451,500
First Christian Church of Louisville	2,000
First Presbyterian Church	5,250
Florida Sheriffs Boys Ranch	35,000
Focus on Senior Citizens of Tuscaloosa County, Inc	37,400
Fort Thomas Heritage League, Inc	50,000
Fourth Avenue Presbyterian Church	15,000
Frazier Rehabilitation Center	705,000
Friedman Library	120,000
Friends of Kentucky Four-H	210,000
Friends of Kentucky Public Archives, Inc	25,000
Friends of Searcy Hospital Foundation, Inc	35,000
Fund for the Kentucky School for the Blind Art, Inc	30,000
Georgetown College	4,578,521
God's Pantry-Crisis Food Center, Inc	50,000
Goodwill Industries of Kentucky	158,017
Governor's Scholars Program, Inc	200,000
Greater Louisville Swim Foundation, Inc	175,000
Greater Louisville-National Multiple Sclerosis Society	10,000
Greenspace, Inc	10,000
Habitat for Humanity	44,000
Hanover College	4,261,416
Harrison County, Mississippi	94,700
Haskins Herrington Corporation	75,000
Hays Kennedy Park Foundation	25,000
Heart Fund of Kentucky	15,500
Heart of the Parks Foundation, Inc	20,000
Hindman Settlement School	50,000
Historic Homes Foundation, Inc	186,500
Historic Mobile Preservation Society	45,000
Historic Properties Endowment Fund	5,000
Home of the Innocents	800,000
Honorable Order of Kentucky Colonels	1,000
Hospice of Louisville, Inc	40,000
Huntingdon College	550,000
Independent Industries, Inc	100,000
Iroquois Child Care Center	6,000
Isaac W. Bernheim Foundation	55,000
J.B. Speed Art Museum	850,000
Jefferson County Crimestoppers	90,000
Jefferson County Fiscal Court	1,080,000
Jefferson County Police Department	3,870
Jefferson County Public Education Foundation	246,200
Jewish Community Center	261,735
Jewish Hospital, Inc	55,000
John Sherman Cooper Commemoration Fund, Inc	2,000
Judson College	250,000
Julius T. Wright School for Girls	250,000
Junior League of Louisville, Inc	209,000
Junior Achievement of Kentuckiana, Inc	544,789
Junior Achievement of Mobile, Alabama	75,000
Junior League of Tuscaloosa, Inc	25,000
Kentuckiana Children's House	20,000
Kentuckiana Girl Scout Council	101,975
Kentuckiana Interfaith Community	85,000
Kentuckiana Metroversity	124,000
Kentucky Art and Craft Foundation	25,000
Kentucky Baptist Hospitals	125,000
Kentucky Bar Foundation, Inc.	50,000
Kentucky Bicentennial Commission	1,992
Kentucky Center for Public Issues	150,000
Kentucky Council on Economic Education	337,000
Kentucky Country Day School	250,050
Kentucky Derby Museum Corporation	6,904,000
Kentucky Easter Seals Society, Inc	142,500
Kentucky Education Foundation, Inc	150,000
Kentucky Harvest	15,200
Kentucky Hill Industries, Inc	25,000
Kentucky Historical Society	10,000
Kentucky Independent College Foundation, Inc	55,000
Kentucky Library Association	2,800
Kentucky Lions Eye Foundation, Inc	54,000
Kentucky Lung Association	8,700
Kentucky Quilt Project, Inc	10,000
Kentucky Railway Museum, Inc	22,000
Kentucky Science & Technology Council, Inc	275,000
Kentucky Sheriffs' Association	5,000
Kentucky State University	500,000
Kentucky Synod Educational Campaign	10,000
Kentucky Tennis Patrons Foundation	200
Kentucky Tomorrow, Inc	30,000
Kentucky Wesleyan College	4,564,260
KentuckyShow	300,000
The King's Daughters and Sons Home, Inc	7,500
Kiwanis Children's Cancer Clinic Fund	10,000
KMI Memorial Chapel Foundation	500
Lake Cumberland Four-H Club Center, Inc	25,000
Land Between the Lakes Association	8,000
Leadership Kentucky, Inc	50,000
Leadership Louisville Foundation, Inc	60,000
Lees College	544,000
Leukemia Society of Kentucky, Inc	2,000
Liberty Hall, Inc	40,000
Life Span, Inc	350,000
Lilly Woods Forest Association	23,779
Lindsey Wilson College	425,000
Little Sisters of the Poor, Louisville	255,500
Little Sisters of the Poor, Mobile, Alabama	25,000
Living Arts and Sciences Center	25,000
Louisville Area Chamber of Commerce	265,000

	Amount
Louisville Bar Foundation, Inc	25,000
Louisville Board of Education	1,125,000
Louisville Civic Ventures, Inc	335,833
Louisville Collegiate School	205,000
Louisville Community Foundation, Inc	25,000
Louisville Dance Council, Inc	750
Louisville Deaf Oral School	310,052
Louisville Development Foundation, Inc	2,250,750
Louisville Free Public Library Foundation, Inc	970,000
Louisville Fund	27,500
Louisville Jaycees	117,000
Louisville Medical Research Foundation, Inc	15,000
Louisville Presbyterian Theological Seminary	100,000
Louisville Red Shield Boys Club, Inc	11,000
Louisville School for Autistic Children	13,353
Louisville Seahawks	30,000
Louisville Tennis Center, Inc	250
Louisville Urban League	121,033
Louisville Waterfront Development Corporation	250,000
Louisville Zoological Foundation	2,050,000
Louisville/Jefferson County Clean Community System	9,125
National Conference of Christians and Jews	13,000
Madonna Manor, Inc	155,000
March of Dimes	6,000
Maria Products, Inc	5,000
Marion Military Institute	175,000
Maryhurst School	116,300
McDowell House	50,000
McGill-Toolen High School	100,000
Medical Center Hospitality House, Inc	15,500
Medical Foundation of Jefferson County Medical Society, Inc	720,000
Medical Oncology Research Fund	100
Mercy Medical, Inc	50,000
Methodist Evangelical Hospital, Inc	55,000
Metro Brothers and Sisters, Inc	40,000
Metro React Team, Inc	5,700
Metro United Way	5,057,750
Midway College	325,000
Miscellaneous Contributions (in the South) Mission House	50,000
Mississippi State University	250,000
Mobile Association for Retarded Citizens, Inc	150,000
Mobile Baptist Association	12,000
Mobile College	50,000
Mobile Rehabilitation Association, Inc	35,000
Monroe County Public Library	20,000
Mountain Association for Community Economic Development	5,000
Museum of History and Science	2,500,000
National Conference of Christians and Jews	7,050
National Foundation (Polio, Birth Defects) Ky Chapter	1,000
National Foundation for Infantile Paralysis, Louisville Chpt	6,000
National Municipal League's 84th Conference	5,000
National Society to Prevent Blindness	51,000
Nature Conservancy	956,000
New Directions, Inc	5,000
Northern Ky. Association for Retarded Citizens, Inc	30,000
Notre Dame University	25,000
Old Bardstown Village	108,000
Old Dauphin Way School	50,000
Old Ladies Home	2,750
Our Lady of Peace Hospital	440
Owensboro Area Museum	25,000
Park DuValle Neighborhood Health Center	4,500
Parkhill Family Health Center	50,000
Patton Museum Development Fund	25,000
Penelope House	50,000
Pikeville College	450,500
Pioneer Opportunity Workshop	25,000
Planned Parenthood Inc	16,500
Portland Christian School	25,000
Portland Museum	975,000
Possibilities Unlimited, Inc	50,000
Presbyterian Child Welfare Agency	20,000
Presbyterian Community Center	22,556
Presbyterian Home for Children, Inc	50,000
Presbyterian Hospital	2,500
Presbyterian Sunday School Building Fund	1,000
Preservation Alliance, Inc	100,000
The Prichard Committee for Academic Excellence	50,000
Project Find Child Abuse Treatment Center	25,000
Providence Hospital	168,864
Quicksand Crafts Center	14,000
Recording for the Blind, Inc	24,000
Recovery Inc. of Kentucky	55,000
Red Cross Hospital	58,500
Redwood School & Rehabilitation Center	75,000
Regional Cancer Center Corporation	5,505,250
Roosevelt School Relief Fund	2,000
Rose Polytechnic Institute	12,000
Saint Anthony Hospital	50,000
Saint Benedict's Center for Early Childhood Education	25,000
Saint Benedict's School	10,000
Saint Catharine College	180,000
Saint Charles Care Center & Village	100,000
Saint Charles Montessori Schools	25,000
Saint Francis High School	150,000
Saint Francis School	150,000
Saint John's Center	60,000
Saint Joseph Catholic Orphan Society	92,800
Saint Patrick's Center	310,000
Saint Paul's Episcopal School	125,000
Saint Vincent DePaul Society	100,000
Saint Xavier High School	150,000
Saints Mary and Elizabeth Hospital	50,000
Salvation Army of Louisville	1,704,524
Salvation Army of Mobile, Alabama	100,000
Salvation Army of Owensboro	100,000
Salvation Army of Tuscaloosa, Alabama	10,500
Samford University	10,560
Save the Mansion	35,000
Schizophrenia Foundation, Kentucky, Inc	215,000
Senior House, Inc	30,000
Service Corps of Retired Executives	3,500
Shakertown at Pleasant Hill, Kentucky, Inc	762,500
Shakertown at South Union	10,000
Southern Baptist Theological Seminary	350,000
Southern Police Institute	1,500
Southern Research Institute	200,000
Spalding University	2,150,650
Spina Bifada Association of Kentucky	10,000
Spring Hill College	85,000
Springdale Cemetery Association	117,500
Stillman College	200,000
Stockton Civic Association and Volunteer Fire Department	16,700
Talbot House, Inc	12,000
Telford Community Center, Inc	45,000
Thomas Hospital	100,000
Thomas More College	4,578,521
Thruston B. Morton Fund	30,000
Transylvania University	2,000,000
Tri-State Drug Rehabilitation and Counseling Program	50,000
Trinity High School	150,000
Troy State University	73,787
Tuscaloosa Academy	127,000
U.S.A. Harvest	35,000
Union College	550,000
Cerebral Palsy KIDS Center	85,850
United Jewish Campaign of Louisville	73,750
United States Olympic Committee	5,000
United States Sports Academy	25,022
University Military School	350,000
University of Alabama	1,116,389
University of Cincinnati	63,000
University of Kentucky	1,039,000
University of Louisville	4,713,918
University of Miami—Law and Economics Center	25,000
University Press of Kentucky	50,000

	Amount
Ursuline Society and Academy of Education, Inc	305,000
Ursuline-Pitt School	30,000
Vietnam Veterans Kentucky Leadership Program, Inc	75,000
Villa Madonna Academy	50,000
Visually Impaired Preschool Services	30,000
Volunteers of America of Kentucky, Inc	117,750
Walden School	125,000
Washington and Lee University	300,000
Wayside Christian Mission	254,768
Wendell Foster Center	136,000
Wesley Community House	50,000
Wilmer Hall Episcopal Children's Home	65,000
Wood Hudson Cancer Research Laboratory, Inc	40,000
Woodbury Forest School	500
YMCA of Frankfort, Kentucky	50,000
YMCA of Greater Louisville	1,977,325
YMCA of Kentucky	3,750
YMCA of Northern Kentucky at Covington	50,000
YMCA of Owensboro Daviess Co	50,000
YMCA of Paris-Bourbon County	100,000
YMHA of Louisville	2,000
YWCA of Louisville	1,069,000
Zoneton Fire District	300
Total: 472 organizations	118,794,051

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. BUNNING. I yield to the gentleman from Louisville.

Mr. MAZZOLI. Mr. Speaker, I thank my dear friend from Kentucky for yielding, my colleague on the committee and in the delegation, and also thank him for his excellent work on this bill. This is something he and I have been working on for a long time. The gentleman from Kentucky has been able to fashion this bill, and I salute him for it.

As he very well knows, and has very aptly pointed out, one of the charitable foundations that would qualify under the bill, the Brown Foundation in Louisville, has over the past 30 years roughly, almost 40 years actually, distributed over $118 million to various charities.

□ 1320

So any kind of a bill like this that would help the Brown Foundation do two things, clean up environmentally unsound areas and, at the same time, contribute money to worthy charities is a good bill, and I join my friend, the gentleman from Kentucky, in urging support for the bill.

Mr. BUNNING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5644.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

EXEMPTING CERTAIN FERRY TRANSPORTATION FROM EXCISE TAX

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5661) to amend the Internal Revenue Code of 1986 to exempt transportation on certain ferries from the excise tax on transportation of passengers by water.

The Clerk read as follows:

H.R. 5661

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXEMPTION FOR TRANSPORTATION ON CERTAIN FERRIES.

(a) GENERAL RULE.—Subparagraph (B) of section 4472(1) of the Internal Revenue Code of 1986 (relating to exception for certain voyages on passenger vessels) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN VOYAGES.—The term 'covered voyage' shall not include—

"(i) a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States, and

"(ii) a voyage of less than 12 hours on a ferry between a port in the United States and a port outside the United States.

For purposes of the preceding sentence, the term 'ferry' means any vessel if normally no more than 50 percent of the passengers on any voyage of such vessel return to the port where such voyage began on the 1st return of such vessel to such port."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to voyages beginning after December 31, 1989; except that no refund of any tax paid before the date of the enactment of this Act shall be made by reason of such amendment.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maine [Mr. ANDREWS], who introduced this bill originally.

Mr. ANDREWS of Maine. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this particular legislation is created to correct a provision that was established in law in 1989 that was a so-called international departure tax on ship passengers.

As you know, the international law provides for gambling in international waters and, as a result of that, we saw the increase of cruise lines specifically for the purpose of offering recreation and gambling in international waters, so-called cruises to nowhere. So this international departure tax or head tax was established for passengers getting on board that kind of a service. Well, unfortunately, that bill extended to basic passenger service, ferry service, to those who were getting on board a ferry not for the purpose of gambling or recreation but for the purpose of going from one port to another port.

Now, the law in 1989 exempted those ferries that would go from U.S. ports, from point a to point b, that were both within the United States and that were voyages of 12 hours or less between those two U.S. ports. However, it did not extend that exemption to those ferries, again, of less than 12 hours in length but extended from an American port to a foreign port.

So if you live in the State of Maine, as I do, or if you live in the Great Lakes area of you live in Washington State and you have people who take ferry service from your home over to Canada, you found yourself confronted with this tax because a provision was not put into the law that would exempt those people from taking a ferry for that purpose.

Mr. Speaker, this bill very simply corrects the inequity, takes care of those people using ferry service for that purpose, and would extend the provision to voyages of passenger vessels of less than 12 hours on a ferry between a port in the United States and a port outside of the United States, similar to what the Prince of Fundy cruise lines, for example, extends ferry service between Portland, ME, and Yarmouth, NS.

Mr. BUNNING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Ways and Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5661.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

APPLICATION OF WAGERING TAXES TO CHARITABLE ORGANIZATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5648) to amend the Internal Revenue Code of 1986 to revise the application of the wagering taxes to charitable organizations.

The Clerk read as follows:

H.R. 5648

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHANGES IN APPLICATION OF WAGERING TAXES TO CHARITABLE ORGANIZATIONS.

(a) EXEMPTION FROM OCCUPATIONAL TAX FOR CHARITABLE ORGANIZATIONS.—Section 4411 of the Internal Code of 1986 (relating to occupational tax on wagering) is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION FOR CHARITABLE ORGANIZATIONS, ETC.—No tax shall be imposed by subsection (a) on—

"(1) any organization exempt from tax under section 501 or 521, and

"(2) any person who is engaged in receiving wagers only for or on behalf of such an organization,

if the only wagers accepted by such organization (and such person) are authorized under the law of the State in which accepted."

(b) EXCEPTION FROM WAGERING TAX FOR CHARITABLE ORGANIZATIONS.—Section 4402 of such Code (relating to exemptions for tax on wagers) is amended by inserting "(a) IN GENERAL.—" before "No tax" and by adding at the end thereof the following new subsection:

"(b) CHARITABLE ORGANIZATIONS, ETC.—

"(1) EXEMPTION WHERE CHARITABLE EXPENDITURES EXCEED WINNINGS.—If the amount of charitable expenditures of any organization described in section 4411(c) for any calendar quarter equals or exceeds the amount of wagering winnings of such organization for such quarter, no tax shall be imposed by this subchapter on wagers placed during such calendar described in section 4411(c)(2) with respect to such organization.

"(2) REDUCTION OF TAX WHERE WINNINGS EXCEED CHARITABLE EXPENDITURES.—

"(A) IN GENERAL.—If paragraph (1) does not apply to an organization or person described in section 4411(c) for any calendar quarter, the tax imposed by this subchapter on wagers placed with such organization or person during such quarter shall be the applicable percentage of the tax which would (but for this paragraph) be imposed on such wagers during such quarter.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage for any calender quarter is the excess of 100 percent over the percentage which the charitable expenditures of such organization for such quarter is of the wagering winnings of such organization for such quarter.

"(3) DEFINITIONS AND SPECIAL RULE.—For purposes of this subsection—

"(A) CHARITABLE EXPENDITURES.—The term 'charitable expenditures' means, for any calendar quarter, the sum of—

"(i) the amount paid by such organization during such quarter to accomplish 1 or more of the purposes described in section 170(c)(2)(B) or to acquire an asset used (or held for use) directly in carrying out 1 or more of such purposes, and

"(ii) the amount permanently setaside by such organization during such quarter for 1 or more of such purposes.

"(B) WAGERING WINNING.—The term 'wagering winnings' means, with respect to any calender quarter, the excess of the wagers which would (but for this subsection) be subject to tax under this subchapter and which are placed with the organization during such calender quarter over the winnings paid on such wagers.

"(C) SPECIAL RULE.—Wagers received by any person for or on behalf of an organization shall be treated as received by such organization."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxes imposed for periods beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to wagers placed in calendar quarters beginning after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, charitable organizations are vital to our society. Through the use of local and private funds, these nonprofit organizations are able to mobilize the Nation's volunteers to provide relief to the needy.

Congress has long recognized the invaluable service of charitable organizations by providing them an exemption from Federal income tax.

Nevertheless, there are two taxes in the Internal Revenue Code which are imposed on charitable and noncharitable entities alike. The first is an annual occupational stamp tax of $50 imposed on each and every volunteer who helps with activities such as jar raffles and pull tabs. The second is a wagering excise tax imposed on gross income from these same activities.

These two taxes impose an undue burden upon nonprofit organizations that conduct games of chance as fundraising activities. It is hard to imagine what tax policy is served by imposing an occupational stamp tax on volunteers. The wagering excise tax is also counterproductive because it doesn't discriminate between income that inures to the benefit of the membership and income that goes for truly charitable activities. In both cases, the result is that resources are drained from our charitable organizations.

H.R. 5648 would exempt from the occupational tax organizations exempt from income tax under code section 501 or 521, and individuals engaged in receiving wagers on behalf of such organizations.

H.R. 5648 would also exclude from the base of the wagering excise tax any amounts which are used for charitable purposes. Thus, if the amount of an organization's charitable expenditures equals or exceeds the amount of the net proceeds from gambling conducted by the organization, then no wagering excise tax would be imposed. If the amount of charitable expenditures is less than the gambling proceeds, the amount of the wagering excise tax would be proportionately reduced. Consequently, funds which go to provide benefits to the organization's membership would remain subject to the excise tax, while amounts spent for youth counseling, for example, would be exempt from tax.

These reforms should have been enacted long ago. They were not addressed until now because the two taxes generally were not collected from charitable groups in the past. However, in recent years, several IRS districts have begun to vigorously enforce collection. Unless reformed, the taxes will soon be collected nationally. It would certainly help our Nation's charitable organizations if we would provide an exemption before, rather than after, the damage is done.

Mr. Speaker, I reserve the balance of my time.

□ 1330

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us addresses a problem caused by two little-known sections of the Internal Revenue Code. For many years, charities and individuals working for charities have unknowingly violated these provisions.

One requires each person engaged in the business of accepting wagers to register with the IRS and to pay an excise tax equal to .25 percent of the amount of such wagers.

The second section at issue here imposes an occupational tax of $50 a year on each person who accepts wagers on behalf of an organization. An annual tax of $500 is imposed on the organization. These taxes are aimed at commercial gambling entities, and they are very unfair when imposed on short-term charitable fundraising activities.

The IRS has recently utilized these laws to impose taxes on nonprofit charitable institutions which raise money through bazaars, raffles, and similar activities.

Most citizens are unaware of the existence of these Federal taxes. A recent surge in IRS enforcement activite has caused charitable groups in several States to pay steep fines and penalties.

Hospitals, schools, fire departments, drug and pregnancy counseling centers, and other vital institutions are assisted through fundraising efforts that could be construed as wagering under the Internal Revenue Code. I do not think that we should discourage or limit this type of activity throught he Internal Revenue Code if it is legal under the law of a particular State.

Consistent and fair enforcement of existing law would likely cost more

than the income produced for the Federal Treasury.

H.R. 5648 would exempt charitable organizations and individuals acting on their behalf of from these occupational and excise taxes.

The amendment contains language to ensure that the proceeds from the gambling activity are permanently dedicated for charitable purposes. This bill will protect our constituents who volunteer for local charities. It will also extricate the IRS from a difficult enforcement area, which produces little revenue and terrible public relations.

Mr. ROSTENKOWSKI. Mr. Speaker, charitable and fraternal organizations raise significant funds for charitable purposes through the conduct of games of chance. For the most part, these games are run by volunteers and patronized by members of the organization or the public.

Since 1989, the Internal Revenue Service [IRS] has taken the position in some districts that these organizations and their volunteers are subject to an annual occupational tax on wagering of $50 per volunteer. In addition, the IRS has sought to impose a wagering excise tax of .25 percent on gross receipts from these same activities.

When these two taxes were first enacted, I doubt that many Members of Congress envisioned that they would be imposed on volunteers or volunteer-run organizations. In any event, it is now clear that the taxes impose an undue burden upon nonprofit organizations that raise money for charity by conducting games of chance. The taxes reduce the income that is available for truly charitable activities.

H.R. 5648 would exempt from the occupational tax organizations exempt from income tax under Code section 501 or 521, and individuals engaged in receiving wagers on behalf of such organizations.

H.R. 5648 would also exclude from the base of the wagering excise tax any amounts which are used for charitable purposes.

During times when we are asking our volunteer and charitable agencies to perform more and more services because of government's inability to afford to do them, it is counterproductive to seek to penalize them by imposing multiple taxes and related paperwork. H.R. 5648 would certainly ease these burdens for groups that use all of the proceeds from games of chance to fund charitable activities.

Mr. MCGRATH. Mr. Speaker, I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5648.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

FEDERAL PROGRAM IMPROVEMENT ACT OF 1992

Mr. PICKLE. Mr. Speaker, by direction of the Committee on Ways and Means, I move to suspend the rules and pass the bill (H.R. 3837) to make certain changes to improve the administration of the Medicare Program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans, as amended.

The Clerk read as follows:

H.R. 3837

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Program Improvement Act of 1992".

TITLE I—PROVISIONS RELATING TO THE MEDICARE PROGRAM

Subtitle A—Durable Medical Equipment

SEC. 101. RESTRICTIONS ON CERTAIN MARKETING AND SALES ACTIVITIES.

(a) PROHIBITING UNSOLICITED TELEPHONE CONTACTS FROM SUPPLIERS OF DURABLE MEDICAL EQUIPMENT TO MEDICARE BENEFICIARIES.—

(1) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(17) PROHIBITION AGAINST UNSOLICITED TELEPHONE CONTACTS BY SUPPLIERS.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual (other than a covered item the supplier has already furnished to the individual) unless—

"(i) the individual gives permission to the supplier to make contact by telephone for such purpose; or

"(ii) the supplier has furnished a covered item under this subsection to the individual during the 15-month period preceding the date on which the supplier contacts the individual for such purpose.

"(B) PROHIBITING PAYMENT FOR ITEMS FURNISHED SUBSEQUENT TO UNSOLICITED CONTACTS.—If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

"(C) EXCLUSION FROM PROGRAM FOR SUPPLIERS ENGAGING IN PATTERN OF UNSOLICITED CONTACTS.—If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this Act, in accordance with the procedures set forth in subsections (c), (f), and (g) of section 1128.".

(2) REQUIRING REFUND OF AMOUNTS COLLECTED FOR DISALLOWED ITEMS.—Section 1834(a) of such Act (42 U.S.C. 1395m(a)), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

"(18) REFUND OF AMOUNTS COLLECTED FOR CERTAIN DISALLOWED ITEMS.—

"(A) IN GENERAL.—If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

"(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

"(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

"(B) SANCTIONS.—If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1842(j)(2).

"(C) NOTICE.—Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

"(D) TIMELY BASIS DEFINED.—A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.".

(b) CONFORMING AMENDMENT.—Section 1834(h)(3) of such Act (42 U.S.C. 1395m(h)(3)) is amended by striking "Paragraph (12)" and inserting "Paragraphs (12) and (17)".

SEC. 102. CERTIFICATION OF PROVIDERS OF DURABLE MEDICAL EQUIPMENT.

(a) CERTIFICATION OF DURABLE MEDICAL EQUIPMENT AND OTHER SUPPLIERS; APPLICATION FOR SUPPLIER NUMBERS.—

(1) MANDATORY SUPPLIER CERTIFICATION.—

(A) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by section 101(a), is further amended by adding at the end the following new paragraph:

"(19) CERTIFICATION OF SUPPLIERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this Act (except as provided in subparagraph (D)), no payment may be made under this part for covered items furnished on or after January 1, 1994, unless the supplier furnishing the item meets the standards for certification described in subparagraph (B).

"(B) STANDARDS FOR CERTIFICATION.—A supplier meets the standards for certification described in this subparagraph if (in accordance with regulations of the Secretary) the supplier—

"(i) is in compliance with all applicable State and Federal licensure and regulatory requirements;

"(ii) maintains a physical facility and inventory on an appropriate site;

"(iii) has appropriate liability insurance.

"(iv) meets such other appropriate standards as the Secretary may establish by regulation.

"(C) PROHIBITION AGAINST DELEGATION OF CERTIFICATIONS.—The Secretary may not delegate the responsibility to certify suppliers under subparagraph (A) to any non-governmental entity.

"(D) EXCEPTION FOR SUPPLIERS WITH EXISTING PROVIDER AGREEMENTS.—Subparagraph (A) shall not apply with respect to covered items furnished by a supplier that is a provider of services that has in effect an agreement with the Secretary under section 1866(a).".

(B) REQUIRING REFUNDS OF AMOUNTS COLLECTED.—Section 1834(a)(18) of the Social Security Act (as added by section 101(a)(2)) is amended by striking "paragraph (17)(B)" each place it appears and inserting "paragraph (17)(B) or paragraph (19)(A)".

(C) PUBLICATION OF STANDARDS.—Not later than July 1, 1993, the Secretary shall publish in the Federal Register the certification standards for suppliers of covered items established under section 1834(a)(19)(B) of the Social Security Act (as added by subparagraph (A)).

(2) APPLICATIONS FOR SUPPLIER NUMBERS.—

(A) CRITERIA; INFORMATION REQUIRED.—Not later than July 1, 1993, the Secretary of Health and Human Services shall establish criteria for the application for and issuance of supplier numbers for suppliers of durable medical equipment, prosthetic devices, and urological and ostomy care supplies under part B of the medicare program, and shall include in such criteria a requirement that the supplier disclose to the Secretary the following information (to the extent that the information is not otherwise required to be disclosed under section 1124A of the Social Security Act):

(i) Information relating to the ownership of the supplier and the identity of managing employees.

(ii) The identity and billing number of other entities providing items or services for which payment may be made under the medicare program with respect to which an owner or managing employee of the supplier has or has had an ownership or control interest within the previous 3 years.

(iii) Whether any penalties (including exclusion from participation) have been assessed against any owner or managing employee of the supplier under the medicare or medicaid programs.

(iv) The identity and existence of any subcontracting or subsidiary business entities with which the provider is affiliated or doing business which are advertising or marketing firms directly or indirectly involved in sales of durable medical equipment or other supplies to medicare beneficiaries.

(v) Information on the supplier's sales and billing practices, including whether the supplier engages in telemarketing and whether items are directly purchased, warehoused, and shipped by the entity or supplied under arrangements with other suppliers.

(vi) Documentation regarding whether the supplier is certified as a durable medical equipment supplier by the Secretary.

(vii) Any other information the Secretary considers appropriate.

(B) PROHIBITION AGAINST MULTIPLE BILLING NUMBERS.—The Secretary may not issue more than one billing number to any supplier described in subparagraph (A), unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(C) EXCEPTION FOR PROVIDERS OF SERVICES.—The standards established pursuant to subparagraph (A) and the prohibition described in subparagraph (B) shall not apply with respect to any supplier described in subparagraph (A) that is a provider of services that has in effect an agreement with the Secretary under section 1866(a) of the Social Security Act.

(b) STUDY OF CERTIFICATION AND QUALITY CRITERIA.—

(1) STUDY.—The Secretary of Health and Human Services (in consultation with representatives of suppliers of durable medical equipment under the medicare program and such other individuals or organizations as the Secretary considers appropriate) shall conduct a study of the feasibility and desirability of establishing and implementing additional certification and quality assurance criteria for suppliers of durable medical equipment, prosthetic devices, and urological and ostomy care supplies under part B of the medicare program, and shall include in the study an analysis of standards relating to safety, patient records and rights, equipment management and maintenance, qualifications of employees (including the appropriate use of certified respiratory therapists in providing home oxygen therapy services), and internal quality assurance programs.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit a report on the study conducted under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

SEC. 103. REFORM OF PROCEDURES FOR FILING, PROCESSING, AND REVIEWING CLAIMS.

(a) PROHIBITION AGAINST CARRIER SHOPPING.—

(1) IN GENERAL.—Section 1834(a)(12) of the Social Security Act (42 U.S.C. 1395m(a)(12)) is amended to read as follows:

"(12) USE OF CARRIERS TO PROCESS CLAIMS.—

"(A) DESIGNATION OF REGIONAL CARRIERS.—The Secretary may designate, by regulation under section 1842, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

"(B) PROHIBITION AGAINST CARRIER SHOPPING.—(i) No supplier of a covered item may present or cause to be presented a claim for payment under this part unless such claim is presented to the appropriate carrier.

"(ii) For purposes of clause (i), the term 'appropriate carrier' means the carrier having jurisdiction over the geographic area that includes the location where the item was directly furnished to the patient.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished on or after July 1, 1993.

(3) CLARIFICATION OF AUTHORITY TO DESIGNATE CARRIERS FOR OTHER ITEMS AND SERVICES.—Nothing in this subsection or the amendment made by this subsection may be construed to restrict the authority of the Secretary of Health and Human Services to designate regional carriers or modify claims jurisdiction rules with respect to items or services under part B of the medicare program that are not covered items under section 1834(a) of the Social Security Act or prosthetic devices or orthotics and prosthetics under section 1834(h) of such Act.

(b) CERTIFICATES OF MEDICAL NECESSITY FOR ITEMS OF DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, AND ORTHOTICS AND PROSTHETICS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall, in consultation with carriers under part B of the medicare program, develop one or more standardized certificates of medical necessity for durable medicare equipment, prosthetic devices, and orthotics and prosthetics to be completed by each physician who prescribes such an item for any medicare beneficiary and transmitted to the carrier processing the claim for payment for the item under the program and to the beneficiary receiving the item.

(c) COVERAGE AND REVIEW CRITERIA.—

(1) DEVELOPMENT AND ESTABLISHMENT.—Not later than July 1, 1993, the Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment, individuals enrolled under part B of the medicare program, and appropriate medical specialty societies, shall develop and establish uniform national coverage and utilization review criteria for 200 items of durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings selected in accordance with the standards described in paragraph (2). The Secretary shall publish the criteria as part of the instructions provided to fiscal intermediaries and carriers under the medicare program.

(2) STANDARDS FOR SELECTING ITEMS SUBJECT TO CRITERIA.—The Secretary may select an item for coverage under the criteria developed and established under paragraph (1) if the Secretary finds that—

(A) the item is frequently purchased or rented by beneficiaries;

(B) the item is frequently subject to a determination that it is not medically necessary; or

(C) the coverage or utilization criteria applied to the item (as of the date of the enactment of this Act) is not consistent among carriers.

(3) ANNUAL REVIEW AND EXPANSION OF ITEMS SUBJECT TO CRITERIA.—The Secretary shall annually review the coverage and utilization of items of durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings to determine whether items not included among the items initially selected under paragraph (1) should be made subject to uniform national coverage and utilization review criteria, and, if appropriate, shall apply such criteria to such additional items.

(4) REPORT ON EFFECT OF UNIFORM CRITERIA ON UTILIZATION OF ITEMS.—Not later than January 1, 1994, the Secretary shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate analyzing the impact of the uniform criteria established under paragraph (1) on the utilization of items of durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings by individuals enrolled under part B of the medicare program, and shall include in the report recommendations regarding the development and establishment of uniform coverage and utilization criteria for additional items under the program.

SEC. 104. ADJUSTMENTS FOR INHERENT REASONABLENESS.

(a) ADJUSTMENTS MADE TO FINAL PAYMENT AMOUNTS.—Section 1834(a)(10)(B) of the Social Security Act (42 U.S.C. 1395m(a)(10)(B)) is amended by adding at the end the following: "In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.".

(b) ADJUSTMENT REQUIRED FOR CERTAIN ITEMS.—

(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.

SEC. 105. ADVANCED DETERMINATION REQUIREMENTS FOR POTENTIALLY OVERUSED ITEMS.

(a) TREATMENT OF POTENTIALLY OVERUSED ITEMS AND ADVANCED DETERMINATIONS OF COVERAGE.—

(1) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by sections 101 and 102, is further amended by adding at the end the following new paragraph:

"(20) SPECIAL TREATMENT FOR POTENTIALLY OVERUSED ITEMS.—

"(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that

are potentially overused, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, motorized scooters, decubitus care mattresses, and any such other item determined by the Secretary to be potentially overused on the basis of any of the following criteria—

"(i) the item is marketed directly to potential patients;

"(ii) the item is marketed with an offer to potential patients to waive the costs of coinsurance associated with the item or is marketed as being available at no cost to policyholders of a medicare supplemental policy (as defined in section 1882(g)(1));

"(iii) the item has been subject to a consistent pattern of overutilization; or

"(iv) a high proportion of claims for payment for such item under this part may not be made because of the application of section 1862(a)(1).

"(B) ITEMS SUBJECT TO SPECIAL CARRIER SCRUTINY.—Payment may not be made under this part for any item contained in the list developed by the Secretary under subparagraph (A) unless the carrier has subjected the claim for payment for the item to special scrutiny or has followed the procedures described in paragraph (11)(C) with respect to the item.".

(2) ADVANCE CARRIER DETERMINATIONS FOR CUSTOMIZED ITEMS.—Section 1834(a)(11) of such Act (42 U.S.C. 1395m(a)(11)) is amended by adding at the end the following new subparagraph:

"(C) CARRIER DETERMINATIONS FOR CERTAIN ITEMS IN ADVANCE.—Upon the request of a supplier, a carrier shall determine in advance whether payment for an item may not be made under this subsection because of the application of section 1862(a)(1) if—

"(i) the item is a customized item (other than inexpensive items specified by the Secretary); or

"(ii) the item is subject to special carrier scrutiny under paragraph (20)(B).".

(3) REQUIRING CARRIERS TO MEET CRITERIA RELATING TO TIMELY RESPONSE TO REQUESTS.—Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(4) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall require the carrier to meet criteria developed by the Secretary to measure the timeliness of carrier responses to requests for payment of items described in section 1834(a)(11)(C).".

(4) TECHNICAL AMENDMENT.—Section 1834(h)(3) of such Act is amended by striking "paragraph (10) and paragraph (11)" and inserting "paragraphs (10) and (11)".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after July 1, 1993.

(b) REPORT ON IMPLEMENTATION AND REVIEW OF POTENTIALLY OVERUSED ITEMS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate describing the steps the Secretary has taken to carry out the provisions of section 1834(a) of the Social Security Act requiring advance coverage determinations or special carrier scrutiny for certain items, together with an analysis of the effectiveness of such requirements in reducing unnecessary utilization of items of durable medical equipment under part B of the medicare program.

SEC. 106. PHYSICIAN OWNERSHIP REFERRAL ARRANGEMENTS REGARDING DURABLE MEDICAL EQUIPMENT SUPPLIERS.

(a) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by sections 101(a), 102(a), and 105(a), is further amended by adding at the end the following new paragraph:

"(21) LIMITATION ON CERTAIN PHYSICIAN REFERRALS.—

"(A) PROHIBITION OF CERTAIN REFERRALS.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), if a physician (or immediate family member of such physician) has a financial relationship with an entity specified in clause (ii), then—

"(I) the physician may not make a referral to the entity for the furnishing of covered items for which payment otherwise may be made under this part, and

"(II) the entity may not present or cause to be presented a claim under this part or bill to any individual, third party payor, or other entity for covered items furnished pursuant to a referral prohibited under subclause (I).

"(ii) FINANCIAL RELATIONSHIP SPECIFIED.—For purposes of this paragraph, a financial relationship of a physician (or immediate family member) with an entity specified in this clause is—

"(I) except as provided in subparagraphs (C) and (D), an ownership or investment interest in the entity; or

"(II) except as provided in subparagraph (E), a compensation arrangement (as defined in subparagraph (H)(i)(a)) between the physician (or immediate family member) and the entity.

An ownership or investment interest described in subclause (I) may be through equity, debt, or other means.

"(B) GENERAL EXCEPTIONS TO BOTH OWNERSHIP AND COMPENSATION ARRANGEMENT PROHIBITIONS.—Subparagraph (A)(i) shall not apply in the following cases:

"(i) PHYSICIANS' SERVICES.—In the case of physicians' services (as defined in section 1861(q)) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subparagraph (H)(iv)) as the referring physician.

"(ii) IN-OFFICE ANCILLARY SERVICES.—In the case of services—

"(I) that are furnished—

"(a) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are employed by such physician or group practice and who are personally supervised by the physician or by another physician in the group practice, and

"(b)(1) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of covered items, or

"(2) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice for the centralized provision of the group's covered items, and

"(II) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(iii) PREPAID PLANS.—In the case of services furnished—

"(I) by an organization with a contract under section 1876 to an individual enrolled with the organization,

"(II) by an organization described in section 1833(a)(1)(A) to an individual enrolled with the organization, or

"(III) by an organization receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization.

"(iv) HOSPITAL FINANCIAL RELATIONSHIP UNRELATED TO THE PROVISION OF COVERED ITEMS.—In the case of a financial relationship with a hospital if the financial relationship does not relate to the provision of covered items.

"(v) OTHER PERMISSIBLE EXCEPTIONS.—In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

"(C) GENERAL EXCEPTION RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION FOR OWNERSHIP IN PUBLICLY-TRADED SECURITIES.—Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which were purchased on terms generally available to the public and which are in a corporation that—

"(i) is listed for trading on the New York Stock Exchange or on the American Stock Exchange, or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

"(ii) had, at the end of the corporation's most recent fiscal year, total assets exceeding $100,000,000,

shall not be considered to be an ownership or investment interest described in subparagraph (A)(ii)(a).

"(D) ADDITIONAL EXCEPTIONS RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION.—The following, if not otherwise excepted under subparagraph (B), shall not be considered to be an ownership or investment interest described in subparagraph (A)(ii)(a):

"(i) HOSPITALS IN PUERTO RICO.—In the case of covered items provided by a hospital located in Puerto Rico.

"(ii) RURAL PROVIDER.—In the case of covered items if the supplier furnishing the items is in a rural area (as defined in section 1886(d)(2)(D)).

"(iii) HOSPITAL OWNERSHIP.—In the case of covered items furnished by a hospital (other than a hospital described in clause (1)) if—

"(I) the referring physician is authorized to furnish equipment at the hospital, and

"(II) the ownership or investment interest is in the hospital itself (and not merely in a subdivision thereof).

"(E) EXCEPTIONS RELATING TO OTHER COMPENSATION ARRANGEMENTS.—The following shall not be considered to be a compensation arrangement described in subparagraph (A)(ii)(II):

"(i) RENTAL OF OFFICE SPACE.—Payments made for the rental or lease of office space if—

"(I) there is a written agreement, signed by the parties, for the rental or lease of the space, which agreement—

"(a) specifies the space covered by the agreement and dedicated for the use of the lessee,

"(b) provides for a term of rental or lease of at least one year;

"(c) provides for payment on a periodic basis of an amount that is consistent with fair market value;

"(d) provides for an amount of aggregate payments that does not vary (directly or indirectly) based on the volume or value of any referrals of business between the parties; and

"(e) would be considered to be commercially reasonable even if no referrals were made between the parties;

"(II) in the case of rental or lease of office spac in which a physician who is an interested investor (or an interested investor who is an immediate family member of the physician) has an ownership or investment interest, the office space is in the same building as the building in which the physician (or group practice of which the physician is a member) has a practice; and

"(III) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(ii) EMPLOYMENT AND SERVICE ARRANGEMENTS WITH HOSPITALS.—An arrangement between a hospital and a physician (or immediate family member) for the employment of the physician (or family member) or for the provision of administrative services, if—

"(I) the arrangement is for identifiable services;

"(II) the amount of the remuneration under the arrangement—

"(a) is consistent with the fair market value of the services, and

"(b) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician;

"(III) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the hospital; and

"(IV) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(iii) OTHER SERVICE ARRANGEMENTS.—Remuneration from an entity (other than a hospital) under an arrangement if—

"(I) the arrangement is—

"(a) for specific identifiable services as the medical director or as a member of a medical advisory board at the entity pursuant to a requirement of this title,

"(b) for specific identifiable physicians' services to be furnished to an individual receiving hospice care if payment for such services may only be made under this title as hospice care,

"(c) for specific physicians' services furnished to a nonprofit blood center, or

"(d) for specific identifiable administrative services (other than direct patient care services), but only under exceptional circumstances specified by the Secretary in regulations;

"(II) the requirements described in subclauses (II) and (III) of clause (ii) are met with respect to the entity in the same manner as they apply to a hospital; and

"(III) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(iv) PHYSICIAN RECRUITMENT.—In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

"(I) the physician is not required to refer patients to the hospital,

"(II) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

"(III) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(v) ISOLATED TRANSACTIONS.—In the case of an isolated financial transaction, such as a one-time sale of property, if—

"(I) the requirements described in subclauses (II) and (III) of clause (ii) are met with respect to the entity in the same manner as they apply to a hospital, and

"(II) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(vi) SALARIED PHYSICIANS IN A GROUP PRACTICE.—A compensation arrangement involving payment by a group practice of the salary of a physician member of the group practice.

"(F) REPORTING REQUIREMENTS.—Each entity providing covered items or services for which payment may be made under this part shall provide the Secretary with the information concerning the entity's ownership arrangements, including—

"(i) the covered items and services provided by the entity, and

"(ii) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subparagraph (A)(ii)(a)) in the entity, or whose immediate relatives have such an ownership or investment.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. Such information shall first be provided not later than 1 year after the date of the enactment of this paragraph. The requirement of this subparagraph shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provide services for which payment may be made under this title very infrequently. The Secretary may waive the requirements of this subparagraph (and the requirements of chapter 35 of title 44, United States Code, with respect to information provided under this subparagraph) with respect to reporting by entities in a State (except for entities providing covered items) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.

"(G) SANCTIONS.—

"(i) DENIAL OF PAYMENT.—No payment may be made under this part for a covered item which is provided in violation of subparagraph (A)(i).

"(ii) REQUIRING REFUNDS FOR CERTAIN CLAIMS.—If a person collects any amounts that were billed in violation of subparagraph (A)(i), the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

"(iii) CIVIL MONEY PENALTY AND EXCLUSION FOR IMPROPER CLAIMS.—Any person that presents or causes to be presented a bill or a claim for an item that such person knows or should know is for an item for which payment may not be made under clause (i) or for which a refund has not been made under clause (ii) shall be subject to a civil money penalty of not more than $15,000 for each such item. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(iv) CIVIL MONEY PENALTY AND EXCLUSION FOR CIRCUMVENTION SCHEMES.—Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this paragraph, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(v) FAILURE TO REPORT INFORMATION.—Any person who is required, but fails, to meet a reporting requirement of subparagraph (F) is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A.

"(H) DEFINITIONS.—For purposes of this paragraph:

"(i) COMPENSATION ARRANGEMENT; REMUNERATION.—(I) The term 'compensation arrangement' means any arrangement involving any remuneration between a physician (or immediate family member) and an entity.

"(II) The term 'remuneration' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

"(ii) EMPLOYEE.—An individual is considered to be 'employed by' or an 'employee' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

"(iii) FAIR MARKET VALUE.—The term 'fair market value' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

"(iv) GROUP PRACTICE.—The term 'group practice' means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

"(I) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides (including medical care, consultation, diagnosis, or treatment) through the joint use of shared office space, facilities, equipment, and personnel;

"(II) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group;

"(III) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group; and

"(IV) which meets such other standards as the Secretary may impose by regulation.

In the case of a faculty practice plan associated with a hospital with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group (as well as perform other tasks such as research), the previous sentence shall be applied only with respect to the services provided within the faculty practice plan.

"(v) INTERESTED INVESTOR; DISINTERESTED INVESTOR.—The term 'interested investor' means, with respect to an entity, an investor who is a physician in a position to make or to influence referrals or business to the entity (or who is an immediate family member of such an investor), and the term 'disinterested investor' means an investor other than an interested investor.

"(vi) INVESTOR.—The term 'investor' means, with respect to an entity, a person with a finan-

cial relationship specified in subparagraph (A)(ii) with the entity.

"(vii) REFERRAL; REFERRING PHYSICIAN.—

"(I) PHYSICIANS' SERVICES.—In the case of an item or service for which payment may be made under this part, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a 'referral' by a 'referring physician'.

"(II) OTHER ITEMS.—The request or establishment of a plan of care by a physician which includes the provision of the covered item constitutes a 'referral' by a 'referring physician'.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to covered items of durable medical equipment furnished on or after January 1, 1994.

SEC. 107. REPORTS AND STUDIES.

(a) ITEMS REQUIRING IMPROVED DEFINITIONS.—The Secretary of Health and Human Services (in consultation with the Inspector General of the Department of Health and Human Services, manufacturers of durable medical equipment, and entities that establish quality standards for items of durable medical equipment) shall prepare a list of items of durable medical equipment that require improved definitions, including improvements relating to the incorporation of updated quality considerations for the items, for purposes of part B of the medicare program, and shall submit a report on changes made to improve the definitions of items on such list to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993.

(b) GEOGRAPHIC VARIATION AMONG SUPPLIER COSTS COMPARED TO PAYMENT AMOUNTS.—

(1) COLLECTION AND ANALYSIS OF SUPPLIER COST DATA.—The Administrator of the Health Care Financing Administration shall, in consultation with appropriate organizations, collect data on supplier costs of durable medical equipment for which payment may be made under part B of the medicare program, and shall analyze such data to determine the proportions of such costs attributable to the service and product components of furnishing such equipment and the extent to which such proportions vary by type of equipment and by the geographic region in which the supplier is located.

(2) DEVELOPMENT OF GEOGRAPHIC ADJUSTMENT INDEX; REPORTS.—Not later than July 1, 1993, the Administrator shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the data collected and the analysis conducted under subparagraph (A), and shall include in such report—

(A) an analysis on a geographic basis of the supplier costs of durable medical equipment under the medicare program;

(B) the Administrator's recommendations for a geographic cost adjustment index for suppliers of durable medical equipment under the medicare program and an analysis of the impact of such proposed index on payments under the medicare program; and

(C) an analysis of the feasibility and desirability of establishing a national fee schedule for determining the amount of payment for items of durable medical equipment under the medicare program, together with recommendations regarding the design of such a fee schedule (including whether fees should be based on the average or median of current payment amounts or on another basis).

(3) DURABLE MEDICAL EQUIPMENT DEFINED.—In this subsection, the term "durable medical equipment" means covered items under section 1834(a) of the Social Security Act, prosthetic devices, orthotics and prosthetics, ostomy bags and supplies, and surgical dressings.

(c) CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETICS DEVICES OR ORTHOTICS AND PROSTHETICS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate describing items of durable medical equipment treated as prosthetic devices or orthotics and prosthetics for purposes of determining the amount of payment for such items under part B of the medicare program that do not require individualized or custom fitting and adjustment to be used by a patient, and shall include in such report recommendations for an appropriate methodology for determining the amount of payment for such items under such program.

Subtitle B—Secondary Payer Identification and Enforcement

SEC. 111. IMPROVING IDENTIFICATION OF MEDICARE SECONDARY PAYER SITUATIONS.

(a) SURVEY OF BENEFICIARIES.—

(1) IN GENERAL.—Section 1862(b)(5) of the Social Security Act (42 U.S.C. 1395y(b)(5)) is amended by adding at the end the following new subparagraph:

"(D) OBTAINING INFORMATION FROM BENEFICIARIES.—Before an individual applies for benefits under part A or enrolls under part B, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.".

(2) DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR.—The Secretary of Health and Human Services shall enter into an agreement with an entity to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act (as added by paragraph (1)) not later than January 1, 1993.

(b) MANDATORY SCREENING BY PROVIDERS AND SUPPLIERS UNDER PART B.—

(1) IN GENERAL.—Section 1862(b) of such Act (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraph:

"(6) SCREENING REQUIREMENTS FOR PROVIDERS AND SUPPLIERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this title, no payment may be made for any item or service furnished under part B unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

"(B) PENALTIES.—An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1993.

SEC. 112. IMPROVEMENTS IN RECOVERY OF PAYMENTS FROM PRIMARY PAYERS.

(a) SUBMISSION OF REPORTS ON EFFORTS TO RECOVER ERRONEOUS PAYMENTS.—

(1) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816 of the Social Security Act (42 U.S.C. 1396h) is amended by adding at the end the following new subsection:

"(k) An agreement with an agency or organization under this section shall require that such agency or organization submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(2) CARRIERS UNDER PART B.—Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended—

(A) by striking "and" at the end of subparagraphs (G) and (H); and

(B) by inserting after subparagraph (H) the following new subparagraph:

"(I) will submit annual reports to the Secretary describing the steps taken to recover payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(b) REQUIREMENTS UNDER CARRIER PERFORMANCE EVALUATION PROGRAM.—

(1) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816(f)(1)(A) of such Act (42 U.S.C. 1396h(f)(1)(A)) is amended by striking "processing" and inserting "processing (including the agency's or organization's success in recovering payments made under this title for services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)))".

(2) CARRIERS UNDER PART B.—Section 1842(b)(2) of such Act (42 U.S.C. 1395u(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) In addition to any other standards and criteria established by the Secretary for evaluating carrier performance under this paragraph relating to avoiding erroneous payments, the Secretary shall establish standards and criteria relating to the carrier's success in recovering payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(c) DEADLINE FOR REIMBURSEMENT BY PRIMARY PLANS.—

(1) IN GENERAL.—Section 1862(b)(2)(B)(i) of such Act (42 U.S.C. 1395y(b)(2)(B)(i)) is amended by adding at the end the following sentence: "If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).".

(2) CONFORMING AMENDMENT.—The heading of clause (i) of section 1862(b)(2)(B) of such Act is amended to read as follows: "REPAYMENT REQUIRED.—".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments for items and services furnished on or after January 1, 1993.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act for years beginning with 1993.

SEC. 113. STUDY OF EFFECTIVENESS OF SECONDARY PAYER REFORMS.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the effectiveness of the amendments made by this subtitle in improving

collections from primary plans for expenditures under the medicare program for which medicare is a secondary payer, and shall include in the study—

(1) an evaluation of the feasibility and desirability of providing incentives to entities serving as carriers and fiscal intermediaries under the medicare program to recover amounts paid under the program for items and services for which payment should not have been made under the program because of the medicare secondary payer requirements; and

(2) an analysis of the feasibility and desirability of permitting entities that are not engaged in providing, paying for, or reimbursing the cost of medical or other health services under group insurance policies or contracts or similar agreements or arrangements to serve as fiscal intermediaries and carriers under the medicare program.

(b) REPORTS.—Not later than July 1, 1993, the Comptroller General shall submit interim findings on the study conducted under subsection (a) to the Committee on Ways and Means of the House of Representatives. Not later than March 1, 1994, the Comptroller General shall submit a final report on the study to the Committee, and shall include in the report any recommendations the Comptroller General considers appropriate for actions to improve collections from primary plans for expenditures for which medicare is a secondary payer.

Subtitle C—Payment for Interpretation of Electrocardiograms

SEC. 121. PERMITTING SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) DEVELOPMENT OF SEPARATE FEE SCHEDULE AMOUNTS FOR ELECTROCARDIOGRAM INTERPRETATIONS.—Effective for services furnished on or after January 1, 1993—

(1) IN GENERAL.—The Secretary of Health and Human Services—

(A) shall make separate payment, under the fee schedule established under section 1848 of the Social Security Act, for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

(B) shall adjust the relative values established for medical visits and consultations under subsection (c) of such section so as not to include relative value units for electrocardiogram interpretation in the relative value for medical visits and consultations.

(2) CONFORMING AMENDMENT.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by striking paragraph (3).

(b) BUDGET NEUTRALITY.—Effective for services furnished on or after January 1, 1993—

(1) the Secretary shall reduce the relative values for all services established under section 1848(c)(2) of the Social Security Act by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the provisions of this section would not result in expenditures under section 1848 of such Act that exceed the amount of such expenditures under such section that would have been made if this section had not been enacted, and

(2) the Secretary shall reduce the amount determined under section 1848(a)(2)(B)(i)(I) of such Act by such percentage as the Secretary determines to be required to assure that, taking into account the reduction in relative values made under paragraph (1), the provisions of this section do not result in expenditures under section 1848 of such Act in 1993 that exceed the amount of such expenditures under such section that would have been made if this section had not been enacted.

TITLE II—CUSTOMS OFFICER PAY REFORM

SEC. 201. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) is amended to read as follows:

"SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

"(a) OVERTIME PAY.—

"(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

"(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON CALLBACK BASIS.—

"(A) MINIMUM DURATION.—Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment.

"(B) COMPENSATION FOR COMMUTING TIME.—

"(i) IN GENERAL.—Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

"(ii) EXCEPTION.—Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

"(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(2) SUNDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

"(3) HOLIDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

"(c) LIMITATIONS.—

"(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

"(2) EXCLUSIVITY OF PAY UNDER THIS SECTION.—A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) for time worked may not receive pay or other compensation for that work under any other provision of law.

"(d) REGULATIONS.—The Secretary of the Treasury shall prescribe such regulations as are necessary or appropriate to carry out this section, including regulations—

"(1) to ensure that callback work assignments are commensurate with the overtime pay authorized for such work; and

"(2) to prevent the disproportionate assignment of overtime work to customs officers who are near to retirement.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

"(2) The term 'holiday' means any day designated as a holiday under a Federal statute or Executive order.".

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Act of June 3, 1944 (19 U.S.C. 1451a), is repealed.

(2) Section 450 of the Tariff Act of 1930 (19 U.S.C. 1450) is amended—

(A) by striking out "AT NIGHT" in the section heading and inserting "DURING OVERTIME HOURS";

(B) by striking out "at night" and inserting "during overtime hours"; and

(C) by inserting "aircraft," immediately before "vessel".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to customs inspectional services provided on or after October 1, 1992.

SEC. 202. FOREIGN LANGUAGE PROFICIENCY AWARDS FOR CUSTOMS OFFICERS.

Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 5(e)(1) of the Act of February 13, 1911) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

SEC. 203. APPROPRIATIONS REIMBURSEMENTS FROM THE CUSTOMS USER FEE ACCOUNT.

Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended—

(1) by amending clause (i) of subparagraph (A) to read as follows:

"(i) in—

"(I) paying overtime compensation and premium pay under section 5(a) and (b) of the Act of February 13, 1911,

"(II) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I), and

"(III) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and"; and

(2) by striking out "except for costs described in subparagraph (A)(i)(I) and (II)," in subparagraph (B)(i).

SEC. 204. TREATMENT OF CERTAIN PAY OF CUSTOMS OFFICERS FOR RETIREMENT PURPOSES.

(a) IN GENERAL.—Section 8331(3) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the semicolon at the end of subparagraph (D) and inserting "; and";

(3) by adding after subparagraph (D) the following:

"(E) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;"; and

(4) by striking out "subparagraphs (B), (C), and (D) of this paragraph," and inserting "subparagraphs (B), (C), (D), and (E) of this paragraph".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act and apply only with respect to service performed on or after such date.

SEC. 205. REPORTS.

(a) CUSTOMS USER FEE ACCOUNT REPORTS.—Subparagraph (D) of section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)(D)) is amended to read as follows:

"(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

"(i) containing a detailed accounting of all expenditures from the Customs User Fee Account during such year, including a summary of the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii); and

"(ii) containing a listing of all callback assignments of customs officers for which overtime compensation was paid under section 5(a) of the Act of February 13, 1911, and that were less than 1 hour in duration.".

(b) OTHER REPORTS.—

(1) GAO REPORT.—The Comptroller General of the United States shall undertake—

(A) an evaluation of the appropriateness and efficiency of the customs user fee laws for financing the provision of customs inspectional services; and

(B) a study to determine whether cost savings in the provision of overtime inspectional services could be realized by the United States Customs Service through the use of additional inspectors as opposed to continuing the current practice of relying on overtime pay.

The Comptroller General shall submit a report on the evaluation and study required under this subsection to the Committees by no later than the 1st anniversary of the date of the enactment of this Act.

(2) TREASURY RECOMMENDATION.—On the day that the President submits the budget for the United States Government for fiscal year 1994 to the Congress under section 1105(a) of title 31, United States Code, the Secretary of the Treasury shall submit to the Committees recommended legislative proposals for improving the operation of customs user fee laws in financing the provision of customs inspectional services.

(3) DEFINITION OF COMMITTEES.—For purposes of this subsection, the term "Committees" means the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—AVAILABILITY AND USE OF DEATH INFORMATION UNDER THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

SEC. 301. IMPROVEMENTS IN PROGRAM FOR USE OF DEATH CERTIFICATES TO CORRECT PROGRAM INFORMATION.

(a) ELIMINATION OF STATE RESTRICTIONS ON USE OF INFORMATION.—Section 205(r)(1) of the Social Security Act (42 U.S.C. 405(r)(1)) is amended by adding at the end, after and below subparagraph (B), the following new sentence:

"Any contract entered into pursuant to subparagraph (A) shall not include any restriction on the use of information obtained by the Secretary pursuant to such contract, except to the extent that such use may be restricted under paragraph (6).".

(b) INFORMATION PROVIDED TO STATE AGENCIES FREE OF CHARGE.—

(1) IN GENERAL.—Section 205(r)(4) of such Act (42 U.S.C. 405(r)(4)) is amended to read as follows:

"(4)(A) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a State agency other than under this Act, the Secretary shall to the extent feasible provide such information free of charge through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals, if such arrangement does not conflict with the duties of the Secretary under paragraph (1).

"(B) The Secretary may enter into similar agreements with States to provide information free of charge for their use in programs wholly funded by the States if such arrangement does not conflict with the duties of the Secretary under paragraph (1).".

(2) CONFORMING AMENDMENT.—Section 205(r)(3) of such Act (42 U.S.C. 405(r)(3)) is amended by striking "or State".

(c) USE BY STATES OF SOCIAL SECURITY ACCOUNT NUMBERS CONTINGENT UPON PARTICIPATION IN PROGRAM.—Section 205(r)(2) of such Act (42 U.S.C. 405(r)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraph:

"(B) Notwithstanding section 7(a)(2)(B) of the Privacy Act of 1974 and clauses (i) and (v) of subsection (c)(2)(C) of this section, any State which is not a party to a contract with the Secretary meeting the requirements of paragraph (1) (and any political subdivision thereof) may not utilize an individual's social security account number in the administration of any driver's license or motor vehicle registration law.".

SEC. 302. STUDY REGARDING IMPROVEMENTS IN GATHERING AND REPORTING OF DEATH INFORMATION.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of possible improvements in the current methods of gathering and reporting death information by the Federal, State, and local governments which would result in more efficient and expeditious handling of such information.

(b) SPECIFIC MATTERS TO BE STUDIED.—In carrying out the study required under this section, the Secretary shall—

(1) ascertain the delays in the receipt of death information which are currently encountered by the Social Security Administration and other agencies in need of such information on a regular basis,

(2) analyze the causes of such delays,

(3) develop alternative options for improving Federal, State, and local agency cooperation in reducing such delays, and

(4) evaluate the costs and benefits associated with the options referred to in paragraph (3).

(c) REPORT.—Not later than December 31, 1992, the Secretary shall submit a written report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of the study conducted pursuant to this section, together with such administrative and legislative recommendations as the Secretary may consider appropriate.

SEC. 303. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by section 301 shall take effect 1 year after the date of the enactment of this Act.

(b) PROMOTION OF ENTRY INTO NEW CONTRACTS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall take such actions as are necessary and appropriate to promote entry into contracts under section 205(r) of the Social Security Act which are in compliance with the requirements of the amendments made by section 301.

TITLE IV—PBGC REPORT ON EMPLOYERS WITH UNDERFUNDED PLANS

SEC. 401. REPORT ON EMPLOYERS WITH UNDERFUNDED PLANS.

(a) GENERAL RULE.—The Pension Benefit Guaranty Corporation shall, on January 31 of each calendar year after 1991, submit a report to the Congress setting forth—

(1) the name of each contributing sponsor of 1 or more applicable plans having unfunded liabilities aggregating $25,000,000 or more, and

(2) the name of each contributing sponsor with an applicable plan which has an unfunded liability in excess of $5,000,000 and with respect to which a minimum funding waiver in excess of $1,000,000 has been granted.

Information may be included in such report only if such information may be publicly disclosed by the Pension Benefit Guaranty Corporation.

(b) DETERMINATIONS OF UNFUNDED LIABILITY.—For purposes of subsection (a), determinations of the unfunded liability of any plan shall be made by the Pension Benefit Guaranty Corporation on the basis of the most recent information available to it.

(c) APPLICABLE PLAN.—For purposes of subsection (a), the term "applicable plan" means any employee pension benefit plan (as defined in paragraph (2) of section 3 of the Employee Retirement Income Security Act of 1974) covered under subtitle B of title IV of such Act; except that such term shall not include a multiemployer plan (as defined in section 4001(a)(3) of such Act).

(d) CONTRIBUTING SPONSOR.—For purposes of this section, the term "contributing sponsor" has the meaning given to such term by section 4001(a)(13) of such Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. PICKLE] will be recognized for 20 minutes, and the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I yield myself such time as I may need.

Mr. Speaker, I rise to bring before the House, H.R. 3837, the Federal Program Improvement Act of 1992. This bill is pure good government and eliminates fraud, waste, and abuse in our Federal programs. Importantly, this bill makes a wide variety of programs under the jurisdiction of the Committee on Ways and Means more effective and efficient. I want every Member of

the House to know that a vote for this bill is a vote your constituents deserve and expect, H.R. 3837 will make five main changes:

First, stop the payment of Federal benefit checks to dead people. Federal agencies such as the Office of Personnel Management, Veterans Affairs, and Department of Labor have been sending millions of dollars each month in benefit checks, Social Security and others, to deceased individuals, some of whom have been dead for up to 6 years. H.R. 3837 stops this practice.

I might add that our colleague, the gentleman from Pennsylvania [Mr. SCHULZE], has been very active in this field. He is not here with us today, but he has taken a lead in this area of reform.

Second, stop scams involving the sale of durable medical equipment to Medicare beneficiaries. The Federal Government has been paying for equipment, such as paraffin wax baths, mattress pads, knee braces, and electrical nerve stimulators. Medicare beneficiaries don't want or need this equipment. They've been pressured into accepting it by high-pressure telephone salesmen who tell the beneficiaries that the equipment is free, and Medicare will pay for it. Often, the equipment is of very poor quality. The Medicare Program wastes millions of dollars on such equipment. H.R. 3837 stops this practice.

Third, stop Medicare from paying people's health bills when private insurance companies should be paying. The Medicare Program has been paying hundreds of millions of dollars for the health bills of beneficiaries who have other health insurance that is primary to Medicare. Worse, little has been done to recoup these erroneous Medicare payments for the Federal Government. H.R. 3837 stops future erroneous payments and makes it easier to recoup past mispayments.

Fourth, stop mismanagement of inspector overtime pay by the U.S. Customs Service. Customs management practices for paying inspectors overtime are vulnerable to abuse and the underlying law, enacted in 1911, is outdated. As a result of much negotiation and the support of Customs and Treasury, reform measures have been developed to better administer overtime pay (thorough basic, differential, and other pay rate adjustments) and to fairly compensate the inspectors (through increased pension and foreign language benefits). H.R. 3837 contains such balanced reform measures.

Fifth, provide the Congress with information on whether federally insured pension plans are being funded. The Federal Government is potentially liable for $40 billion is unfunded pension plan benefits that have been guaranteed by the Pension Benefit Guaranty Corporation. This amount has grown by $10 billion in just one year. It is important that the Congress have full information on which companies have failed to fund their pension liabilities and by how much. H.R. 3837 will require such reporting.

This bill, according to the CBO pay-go estimate, will result in over $40 million in direct savings over the next five years. In fact, this bill could save taxpayers hundreds of millions of dollars more, maybe billions. The final cost savings resulting from this bill will depend on the unknown magnitude of the problems we have identified and corrected with this legislation.

Most importantly, this bill saves the American people time and money by making Government programs more user-friendly and less susceptible to abuse. The beneficiary of this legislation is the average person on the street—your constituents. H.R. 3837 proves that our aggressive oversight of the laws Congress has enacted will result in the ferreting out of fraud, waste and abuse. The public needs to know that the Congress is out there protecting their pocketbook. This bill will protect the integrity of many programs within the committee's jurisdiction.

At the start of the 102d Congress, the Ways and Means Committee chairman announced that the committee would undertake a major oversight initiative. The initiative would involve a commitment by the committee to improve the efficiency and effectiveness of health, trade, tax, income security, and other laws within the committee's jurisdiction. As chairman of the Committee's Oversight Subcommittee, I was pleased to join the chairman in this initiative. I assure you that this oversight process will continue during succeeding Congresses, in an effort to achieve more savings and better government.

During the 1st session of this Congress, the Subcommittee on Oversight conducted numerous investigations, hearings and site visits, and issued reports, in furtherance of this major oversight initiative. This legislation reflects the bipartisan reform recommendations unanimously agreed to by the Subcommittee on Oversight, and approved by the Ways and Means Committee. I want to thank the chairmen and members of the Committee on Energy and Commerce and Committee on Post Office and Civil Service for their cooperation and support of the bill. Correspondence between the Committee on Ways and Means and the Committee on Post Office and Civil Service with regard to H.R. 3837 will be included in the RECORD.

In summary, the Federal Program Improvement Act of 1992 will:

First, eliminate abusive marketing practices by durable medical equipment [DME] suppliers seeking reimbursement under the Medicare program, and eliminate waste in the administration of the program. These provisions in title I subtitle A, will result in savings, according to the CBO, of at least $27 million over 5 years. The bill provides that:

Medicare carriers—health insurance companies under contract with the Federal Government to administer the Medicare program—will be required to deny Medicare provider numbers to DME suppliers who engage in telemarketing schemes, making unsolicited telephone calls to Medicare beneficiaries to induce them to buy equipment;

The Health Care Financing Administration [HCFA] will be required to establish standards for the certification of DME suppliers and deny the use of more than one provider number by DME suppliers;

Medicare carriers will be required to reimburse DME suppliers based on the fee schedule in effect for the residence or address of the beneficiary, rather than the fee schedule at the "point-of-sale," in order to eliminate "carrier shopping";

HCFA will be required to establish uniform coverage criteria for the most frequently purchased items of DME and to prepare a list of items of DME for which improved equipment definitions would be appropriate;

Medicare carriers will be authorized to use current, rather than historical, price information in determining the appropriate amount of Medicare payment for DME; and,

HCFA will be required to consider the appropriateness of a uniform, national fee schedule and review items classified as "prosthetics and orthotics."

Second, prevent Medicare from erroneously paying health bills when private insurance companies are responsible, and enhance erroneous Medicare payment recoveries under the Medicare Secondary Payer program. The Health and Human Services inspector general has estimated that the extent of such erroneous Medicare payments may be as high as $1 billion annually. To stop this waste of Federal dollars, title I, subtitle B, of the bill provides that:

Medicare beneficiaries will be screened regarding private health insurance coverage at the time of enrollment in the Medicare Program;

Sanctions will be authorized against providers, such as doctors and hospitals, who routinely and willfully fail to screen beneficiaries for private insurance coverage;

Medicare contractors—health insurance companies under contract with the Federal Government to administer the Medicare laws—will be required to submit quarterly reports to HCFA on their efforts to recover erroneous payments; and

The process of recovering erroneous payments from the primary private insurer will be streamlined.

Third, improve the U.S. Customs Service's administration of inspect-

ional overtime to ensure that resources are better managed. Title II of the bill amends the Customs overtime pay laws (the "1911 Act") to better parallel the Federal Employees Pay Act [FEPA] rules which generally apply to Federal workers. The bill will insure that overtime hours paid bear a more direct relationship to hours worked, by providing for:

Payment of overtime benefits only after 40 hours of work have been completed and only for actual time worked; pay rate differentials for night, Sunday, and holiday work performed as part of an inspector's regular work week schedule; a two hour minimum for callbacks; and, additional compensation for a second commute.

To offset income cuts occasioned by these reforms, and in recognition of the valuable services provided to our country by Customs inspectors, the bill would:

Authorize the Commissioner of Customs to pay foreign language bonuses; and

Increase Customs inspector retirement pay by including overtime pay in the calculation of retirement benefits.

In addition, to ensure proper oversight of the Customs management of overtime pay, the bill would provide that:

The definition of "inspectional services" will be clarified to limit 1911 Act overtime benefits to employees performing actual inspectional activities;

The General Accounting Office will report on the costs of covering night and weekend workloads with additional inspectors, rather than by covering such workload by use of inspector overtime; and

Customs will report annually on the use of overtime, including a breakdown of the use of short callback assignments and second commutes.

Fourth, prevent the flow of Federal benefit checks to deceased beneficiaries. The provisions in title II will result in savings, according to CBO, of at least $13 billion over 5 years. To stop Government agencies from paying Federal benefit checks to individuals whose death has already been reported to the Social Security Administration, the bill provides that:

The Social Security Administration will be authorized and required to share with all Federal agencies death certificate information purchased from State agencies; and

The States will allow for Federal Government-wide use of State death information, in exchange for the States' use of Social Security numbers in administering certain State programs.

Fifth, improve access to information about pension plans which are underfunded and for which the Federal Government may become liable. Title IV of the bill requires that:

The Pension Benefit Guaranty Corporation provide two annual reports to the Congress: One, listing plans with underfunding in excess of $25 million and the amount of such underfunding, and two, listing plans with underfunding in excess of $5 million that have been granted a minimum-funding waiver in excess of $1 million according to publicly disclosable information.

I urge my colleagues to support H.R. 3837.

Mr. Speaker, I include a letter from the gentleman from Missouri [Mr. CLAY], dated May 4, 1992, as follows:

COMMITTEE ON POST OFFICE
AND CIVIL SERVICE,
Washington, DC, May 4, 1992.

Hon. DAN ROSTENKOWSKI, *Chairman,*
Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This refers to your letter of April 10, 1992, concerning the bill H.R. 3837, the Federal Program Improvement Act of 1992, which was ordered reported, amended, by your Committee on April 1, 1992.

As explained in your letter, the bill includes provisions which pertain to matters that fall within the jurisdiction of the Committee on Post Office and Civil Service. You have requested our review and approval of those provisions in order to avoid a sequential referral of the bill and thereby expedite consideration of the bill by the House.

We have carefully reviewed the provisions in question—section 202 (foreign language proficiency awards for customs officers) and section 204 (treatment of overtime pay for civil service retirement purposes)—and we have no objection thereto.

As a result of the cooperation you and your Committee staff have provided, we see no need to seek sequential referral of this legislation. However, our agreement to forgo consideration of the legislation should not be construed as a waiver of this Committee's jurisdiction as established by House Rule X, clause 1(o).

I would appreciate your inserting copies of our correspondence relating to this matter in the Congressional Record during the consideration of H.R. 3837 by the House.

Sincerely,

WILLIAM L. CLAY,
Chairman.

COMMITTEE ON WAYS AND MEANS,
Washington, DC, April 10, 1992.

Hon. WILLIAM CLAY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, DC.

DEAR BILL: As you may know, the Committee on Ways and Means recently reported H.R. 3837, the Federal Program Improvement Act of 1991, as amended. This bill is designed to improve the efficient operation of several programs within the jurisdiction of the Committee on Ways and Means. As reported, the bill includes matters within the jurisdiction of the Committee on Post Office and Civil Service.

Specifically, the Committee included provisions authorizing the Secretary of the Treasury to pay foreign language awards to Customs officials who use one or more foreign languages in the performance of their jobs and providing that overtime pay received by Customs officials, up to specific limits, be included in calculating their retirement benefits. The provisions were included to offset the cost to employees of reforms of the overtime system governing the Customs Service.

In order to ensure timely consideration by the House of H.R. 3837, I respectfully request that your Committee not request sequential referral of this legislation. In doing so, I fully acknowledge your Committee's exclusive jurisdiction over matters relating to the Federal Civil Service. I further state that action by the Committee on Ways and Means on this legislation in no way affects your Committee's jurisdiction in this area.

I am enclosing a copy of the Committee on Ways and Means report on H.R. 3837 for your information.

Thank you for your consideration of this request.

Sincerely,

DAN ROSTENKOWSKI,
Chairman.

□ 1340

Mr. Speaker, I reserve the balance of my time.

Mr. BUNNING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 3837, the Federal Program Improvement Act. The act implements five bipartisan reports issued last year by the Ways and Means Oversight Subcommittee.

The goal of the bill is simple: Eliminate waste, fraud, and abuse from our Federal health care, trade, income security, and pension programs. As a result of H.R. 3837, taxpayers will save millions of dollars, and important new safeguards will protect the integrity of Federal spending.

The bill protects the Medicare Program by banning abusive telemarketing of durable medical equipment, establishing minimum standards for DME suppliers, and giving HHS new authority to reduce outrageously high DME prices down to more reasonable levels.

H.R. 3837 further protects Medicare by reducing erroneous payments under the Medicare Secondary Payer Program. Under the bill, HHS would be required to screen beneficiaries for other primary health coverage at the time of enrollment, while doctors would have to screen patients or face new penalties.

The bill also eliminates longstanding abuse and mismanagement of U.S. Customs Service inspector overtime pay. It does this by revising the overtime pay system to pay only for actual time worked in excess of a 40-hour workweek or 8-hour day.

It also restores OMB's authority to oversee the Customs User Fee account that funds overtime.

In order to keep inspectors whole, the bill provides additional pay for second commutes and work performed at night, Sundays, and holidays. In addition, inspectors would get to count part of their overtime pay toward retirement, and receive foreign language bonuses if qualified.

Finally, H.R. 3837 would prevent the payment of Federal benefits to deceased individuals by encouraging cooperative efforts by the States, and

strengthen oversight of our pension system by requiring the Pension Benefit Guaranty Corp. to report on underfunded pension plans.

Mr. Speaker, I commend Chairman PICKLE and my fellow Oversight Subcommittee members, on both sides of the aisle, for the spirit of comity and cooperation on this bill. H.R. 3837 is good for the Federal Government, and good for the Federal taxpayer. I urge my colleagues to vote aye.

Mr. Speaker, I reserve the balance of my time.

Mr. PICKLE. Mr. Speaker, I want to commend the gentleman from Kentucky [Mr. BUNNING] and the minority on the subcommittee because they have worked with us very closely on this legislation. We passed this measure unanimously, on a bipartisan basis, out of the subcommittee, and I think that speaks well for the intent of the members of this subcommittee.

Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. WAXMAN], chairman of the Subcommittee on Health and the Environment of the Committee on Energy and Commerce.

Mr. WAXMAN. I thank the gentleman for yielding this time to me.

Mr. Speaker, H.R. 3837, the Federal Program Improvement Act of 1992, includes a number of changes in the administration of the Medicare Program, as well as other matters not within the jurisdiction of the Committee on Energy and Commerce.

Title I of the bill—which includes the Medicare provisions—is based on the oversight and investigative activities of the Committee on Ways and Means. These Medicare provisions are intended to reduce fraud and abuse in the coverage of durable medical equipment items and supplies, and to reduce erroneous payments under the Medicare secondary payor policy.

Key features of title I as reported by the Committee on Energy and Commerce are:

A ban of Medicare payment for covered durable medical equipment [DME] items marketed through unsolicited telephone contacts with beneficiaries;

Certification standards for DME suppliers including the assignment of unique identifying numbers;

Consolidation and standardization of claims processing and special scrutiny of claims for certain abused items; and

Prohibition on physician referrals to DME suppliers in which they have a financial relationship.

The bill also includes provisions related to Medicare's secondary payor policy. The Secretary would be directed to mail questionnaires to beneficiaries when they first become entitled to Medicare benefits in order to identify whether these individuals are covered under other health plans that are primary to Medicare. In addition, providers and practitioners submitting claims for Medicare services would also be required to include information about other health plan coverage.

The case for these provisions is presented in detail in the report on H.R. 3837—House Report 102-486—by the Committee on Ways and Means and the report of the Committee on Energy and Commerce. It is my understanding that the bill as reported is supported by organizations representing DME suppliers and other interested groups. The Congressional Budget Office has estimated that the bill would result in savings in Medicare outlays totalling $27 million over 5 years.

Mr. Speaker, our Committee did adopt one amendment to title I of H.R. 3837 which I offered on behalf of our colleague, Congressman TOM MCMILLEN, when the bill was considered by the Subcommittee on Health and the Environment.

This amendment—which was adopted unanimously—restores separate payments for physician interpretation of electrocardiograms [EKG's] under Medicare. It would reserve the policy included in OBRA 90 that prohibits such payments. The amendment assures Medicare patients access to this important diagnostic service, and does so in a budget-neutral manner.

Mr. Speaker, I want to thank the gentleman from Texas, Mr. PICKLE, for his leadership in developing this legislation, and for the valuable work of his Oversight Subcommittee in identifying the need for this legislation.

Mr. Speaker, I urge my colleagues to support the bill.

Mr. PICKLE. Mr. Speaker, I want to commend the chairman of the subcommittee, the gentleman from California [Mr. WAXMAN] for his cooperation in the passage of this bill. I would also commend the gentleman from Missouri, Mr. WILLIAM CLAY, the chairman of the Committee on Post Office and Civil Service, who has worked closely with us on this measure.

Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana [Mr. TAUZIN] for the purpose of a colloquy.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman from Texas for yielding to me.

Mr. Speaker, section 106 of H.R. 3837 proposes to extend certain Medicare physician self-referral prohibitions to durable medical equipment. Now, when we think of DME, most of us think of wheelchairs, crutches, beds, and things of that nature, but DME also includes the external portable infusion pumps that medical oncologists use to treat their cancer patients on an ambulatory basis, that is, neither in the hospital nor the physician's office.

This provision would have a negative impact on medical oncologists who prescribe ambulatory chemotherapy and other drug therapies for their cancer patients. Additionally, the laws in some States governing the ability of a physician to dispense drugs prevent physicians from qualifying for the exception provided in current self-referral law for in-office ancillary service. So this provision in H.R. 3837 would allow some oncologists to qualify for the exception, but not others.

This limitation of physician involvement in ambulatory chemotherapy would force some cancer patients back to the more expensive and confining hospital setting, and would prevent them from continuing their work and home activities. Slow continuous infusion of chemotherapy tends to be easier on the patient than single injections of large doses, which have worse side effects.

Now, I am not aware of any studies that demonstrate that it is abusive for a physician to own an interest in a durable medical equipment supplier to which that physician refers patients. The studies of which I am aware, the 1989 study by the office of the inspector general of HHS, found no difference in utilization between physician owned and independently owned DME suppliers, and the more extensive and recent Florida study on physician ownership did not reach that conclusion either.

As a matter of fact, the most recently released report on home drug infusion therapy conducted by the Office of Technology Assessment concludes that the physician's active involvement in the ambulatory drug therapy is very important and results in a higher quality of care. Finally, in the widely heralded Florida self-referral legislation that was enacted unanimously earlier this year in response to the Florida study, not only was DME not singled out for special self-referral prohibition, but referrals by medical oncologists for equipment and drugs and solutions that are furnished or administered to their patients in the course of cancer treatment were specifically excepted from the application of the Florida legislation.

When we prohibited self-referrals for clinical laboratory services in 1989 we provided an exception for referral by pathologists because, after all, laboratory services are integrally related to a pathologist's medical practice. Similarly, the drug therapies administered through these portable infusion pumps are not only an integral part of the medical oncologist's practice, for all intents and purposes, they constitute the practice itself. Treating cancer through drug therapies is what a medical oncologist does.

I would like to see this language amended in conference or via some other vehicle, to the effect that a request by an oncologist for an external ambulatory infusion pump as well as the drugs which must be put into the pump, does not constitute a referral by a referring physician. I would ask the chairman if he agrees that there is a problem and if he would be willing to work with me on resolving this issue.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding to me.

Mr. Speaker, I hasten to assure the gentleman that I will be happy to work with him on this issue. The gentleman brings up an important point, and as we go forward I will certainly be in touch with the gentleman and will work with him.

Mr. TAUZIN. I thank the gentleman for his interest and cooperation.

Mr. PICKLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like at this time to commend the chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL] and the chairman of our full committee, the gentleman from Illinois [Mr. ROSTENKOWSKI] for helping us to advance this important issue. Mr. Speaker, I recommend passage of this bill.

Mr. SCHULZE. Mr. Speaker, I am pleased to speak today in strong support of the Federal Program Improvement Act of 1992. This act represents the bipartisan product of the Ways and Means Subcommittee on Oversight, of which I am the ranking Republican member.

I have long believed that Congress must be vigilant in looking over the shoulder of the far-flung bureaucracy. No stone should go unturned in the search for possible fraud and abuse. This bill is the product of the kind of sustained, long-term oversight effort that is essential to good government. The bill makes key changes to five Federal programs that will result in significant, tangible savings to the taxpayer through improved government operations.

First, Mr. Speaker, one of the most important sections of the bill addresses abusive telemarketing by unscrupulous durable medical equipment [DME] suppliers. Due to the high concentration of both elderly citizens and medical equipment companies in southeastern Pennsylvania, my home district has become a hotbed of this abuse.

During our investigation, the subcommittee traveled to West Chester, PA, and learned first hand how boiler room telemarketing operations make unsolicited calls to unsuspecting seniors, and induce them to buy equipment that they don't need and don't want.

The bill effectively puts an end to this practice by an outright ban on DME telemarketing under the Medicare Program.

I originally proposed such a ban in my bill, H.R. 3587, and I am pleased to say that my legislation has been incorporated in its entirety into this act. The act also gives the Department of Health and Human Services new authority to bring outrageously high DME prices down to current, more reasonable levels.

Second, the bill reduces erroneous payments under the Medicare Secondary Payer [MSP] Program.

Under the Medicare law, private insurers must pay claims before Medicare. However, doctors and hospitals often send claims to Medicare first, since Medicare pays more quickly. The Medicare contractors are then left to figure out who should really pay. As a result, the taxpayers lose up to $1 billion per year due to these erroneous payments.

This bill goes to the heart of the problem, by establishing new penalties for doctors and hospitals who repeatedly violate MSP screening requirements.

Third, the bill ends the abuses and mismanagement that have characterized the overtime pay system for U.S. Customs Service inspectors. Under the 80-year-old overtime law, inspectors get paid 4 hours pay for working just 1 minute past the end of the regular work day, or 16 hours pay for any work done on a Sunday.

Customs managers have treated the user fee fund that covers overtime expenses like free money, and Congress and OMB have exercised little or no oversight.

This bill changes that situation by modifying Customs Service compensation rules to make hours paid bear a more direct relationship to hours worked.

In return, inspectors would be able to include a portion of their overtime earnings toward retirement, and qualify for foreign language bonuses. However, the new retirement benefits would be subject to strict regulatory controls. Also, OMB would again be allowed to police spending on overtime from the Customs COBRA user fee account.

Fourth, the bill would reduce the erroneous payment of Federal benefits to persons who have died. It would do this by directing the Federal agencies to cross-check their beneficiary lists with death data compiled by the Social Security Administration. This screening process will identify deceased beneficiaries more quickly and thus allow the agencies to stop issuing benefit checks more quickly.

Fifth, the bill directs the Pension Benefit Guarantee Corporation to improve its management system for the collection and tracking of premium payments by pension plan sponsors. The Oversight Subcommittee found that the PBGC's premium collection system was under stress because it was based on an out-of-date computer system. The variable rate feature of the PBGC premium pushed the collection system beyond its capability and the system crashed.

Mr. Speaker, the five major features of this act will improve the efficiency of Federal programs. The details are neither glamorous nor flashy but they address the nitty-gritty operational features which are essential for good government. I am proud to be an original cosponsor of this bill, and urge my colleagues to support it.

Mr. ROSTENKOWSKI. Mr. Speaker, at the beginning of the 102d Congress, I announced that the Committee on Ways and Means would conduct a major oversight initiative to review programs within the jurisdiction of the committee focusing on the efficient administration of these programs and on their effectiveness in achieving their goals. In furtherance of the oversight initiative, during the first session of the Congress, the committee conducted more than 50 hearings and numerous site visits. These activities an the committee's findings were reported to the House in February.

H.R. 3837 contains the changes that are necessary to eliminate ineffective and inefficient administration within programs in the committee's jurisdiction as identified by the Subcommittee on Oversight. The subcommittee spent a great deal of time analyzing the operations of the Federal Government and identifying problems areas: Federal benefit payments to deceased individuals; abusive marketing practices by durable medical equipment suppliers; mismanagement overtime pay by the Customs Service; Government payment of medical costs which should have been paid by private insurers; and, weaknesses in the administration of the Pension Benefit Guaranty Corporation. H.R. 3837 shows the ongoing effort of the committee to look at the nuts and bolts of programs that we have enacted and I hope that the Congress will pass this important legislation. In the end, I believe that the American public will be better served as a result of the committee's major oversight initiative and the resulting legislation.

Mr. MCMILLEN of Maryland. Mr. Speaker, I rise today in support of H.R. 3837, the Federal Program Improvement Act, introduced by my colleague Mr. PICKLE. This is an excellent piece of legislation, which makes several needed changes to the Medicare Program.

Of special importance to me are the provisions that were added during consideration of the legislation in the Energy and Commerce Committee dealing with electrocardiogram [EKG] interpretations. Last year I introduced H.R. 3373, the provisions of which are similar to the measures included in this bill.

H.R. 3373 sought to correct a problem that was created by the Omnibus Budget Reconciliation Act of 1990 [OBRA]. OBRA '90 prohibited a separate payment for EKG interpretations that were ordered or performed in conjunction with an office visit or consultation. The Health Care Financing Administration recognized that this created a situation where physicians would receive no reimbursement for a highly skilled procedure. Therefore, as part of its rulemaking for the RBRV fees schedule, HCFA increased the reimbursement level for office visits in order to compensate for a lack of a separate payment for EKG interpretations.

This addition to office visits provided insufficient reimbursement for EKG interpretations, while at the same time providing reimbursement to physicians who did not even perform EKG interpretations. In essence, this reimbursement system created an incentive for physicians not to perform EKG's on Medicare patients.

Clearly, this is an issue which is important to physicians who interpret EKG's. They want, and rightly so, to be fairly compensated for this service. However, it is important that we do not lose sight of the fact that this is also an issue that is very important to Medicare beneficiaries as well.

Cardiovascular diseases and strokes are the leading cause of death among older Americans. 84 percent of Americans over the age of 65 will experience some kind of heart disorder. EKG's are crucial for detection of these types of disorders. The American Heart Association has stated that it is concerned that the prohibition on reimbursement for EKG interpretations will reduce the appropriate utilization of this important diagnostic tool, and that there are defined circumstances where a skilled EKG interpretation is vital to the interest of patients.

The Congress has created a reimbursement system that discourages physicians from providing EKG's to those patients who are most likely to need and benefit from them—the elderly. We need to pass H.R. 3837 to fix this problem.

Also of concern to me, is that the prohibition on a separate payment for EKG interpretations found in OBRA '90 was penny wise and dollar foolish. In our efforts to reduce spending in the Medicare Program, it is quite probable that we accomplish the opposite result. By failing to detect heart disorders early through a properly interpreted EKG, the Medicare Program will incur greater expense through increased hospital and emergency room costs.

As I have already indicated, the measures contained in H.R. 3837, are very similar to H.R. 3373. These provisions are made budget neutral by splitting off the additional payments that HCFA attached to office visits. However, as this add-on was insufficient to compensate for the true value of this service, additional moneys are achieved through a small across the board reduction in all service still in transition under the RBRV fee schedule.

The EKG provisions in H.R. 3837 are supported by the American Society of Internal Medicine, the American Medical Association, the American College of Cardiology, the National Rural Health Association, the American Academy of Family Physicians, the American Academy of Neurology, the American College of Physicians, American Group Practice Association, the Association of Professors of Medicine, Medical Group Management Association, the Renal Physician Association, the American Osteopathic Association, the American College of Rheumatology, the American College of Chest Physicians, the American Association of Clinical Endocrinologists, the Society of Coronary Angiography and Interventions, and the North American Society of Pacing and Electrophysiology. H.R. 3373 has 239 cosponsors from this chamber and Secretary Sullivan has indicated that he has no problem with the provisions found in H.R. 3837.

To close today, I would like to thank Mr. PICKLE for his strong and early support for this legislation. I would like to thank both Chairman DINGELL and Chairman WAXMAN, who were instrumental in moving this legislation forward. While EKG reimbursement is only one part of H.R. 3837, it is an important one, and I would ask all of the Members who have supported H.R. 3373 to lend their support to the bill that is before us today.

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 3837. This bill includes five titles emanating from investigations undertaken by the Subcommittee on Oversight. While I support the Committee on Ways and Means Report on each of the titles, I am particularly interested in one. I have been very concerned about the investigations involving the alleged abuses in the application of the law enacted in 1911 affecting the overtime pay of Customs inspectors. I am particularly interested in the work of customs inspectors. As chairman of the Select Committee on Narcotics Abuse and Control I have come to learn they are front line against illegal drug importation.

The 1911 law is an anachronism. It produces anomalies in overtime pay not reflective of the current operations of Customs. In 1911 most inspections involved ships and some railroads. Today there are an enormous number of airplanes entering the United States through many more ports and airports than ships entered in 1911. Nevertheless, there is no reason just to change the overtime provisions for Customs inspectors without recognizing the extraordinary and often dangerous jobs so many of them do.

When this bill was reported by Subcommittee on Oversight of the Committee on Ways and Means, I objected along with my colleagues on the committee from New York, Mr. DOWNEY and Mr. MCGRATH, that the bill would reduce overall compensation for Customs inspectors by over $23 million per year. The committee came to recognize that the 1911 law needed revision, but that it did not want to reduce the overall compensation of Customs inspectors. I am happy to say that the committee reduced the cut in the overtime pay and took that reduced savings in overtime and used it in a revenue neutral manner to improve the retirement pay of the inspectors and the bonus pay provided to those with special language skills so useful to people who work with foreign travelers. I can support this rationalization of compensation for Customs inspectors.

I recognize some inspectors may lose some immediate cash compensation. However, I believe that in the long run an improved retirement package is good for the Customs Service and their inspectors.

I remain an advocate of law enforcement status for Customs inspectors. I recognize that the distinguished chairman of the Committee on Post Office and Civil Service, Mr. CLAY, is reluctant to make any changes affecting law enforcement status for Federal employees before the Office of Personnel Management makes it report to Congress on this matter next year. I am hopeful that the OPM will recognize the important law enforcement work that Customs inspectors have undertaken.

I will continue to support law enforcement status for the inspectors and I hope that the Senate in their consideration of this title of this bill will give consideration of the status of the inspectors.

I urge the passage of H.R. 3837.

Mr. PICKLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. PICKLE] that the House suspend the rules and pass the bill, H.R. 3837, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1350

PHASEOUT OF THE OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5649) to amend the Internal Revenue Code of 1986 to phaseout the occupational taxes relating to distilled spirits, wine, and beer and to impose the tax on diesel fuel in the same manner as the tax on gasoline.

The Clerk read as follows:

H.R. 5649

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—PHASEOUT OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER

SEC. 101. REDUCTION IN RATES OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) PROPRIETORS OF DISTILLED SPIRITS PLANTS, ETC.—

(1) Subsection (a) of section 5081 is amended by striking "$1,000" and inserting "$500".

(2) Subsection (b) of section 5081 is amended by striking " '$500' for '$1,000' " and inserting " '$250' for '$500' ".

(b) BREWERS.—Subsection (a) of section 5091 is amended by striking "$1,000" and inserting "$500".

(c) WHOLESALE DEALERS.—Subsections (a) and (b) of section 5111 are each amended by striking "$500" and inserting "$250".

(d) RETAIL DEALERS.—Subsections (a) and (b) of section 5121 are each amended by striking "$250" and inserting "$125".

(e) NONBEVERAGE DRAWBACK.—Subsection (b) of section 5131 is amended by striking "$500" and inserting "$250".

(f) INDUSTRIAL USE.—Subsection (a) of section 5276 is amended by striking "$250" and inserting "$125".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1993, but shall not apply to taxes imposed for periods before such date.

SEC. 102. REPEAL OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 of such Code is amended by striking ", on payment of a special tax per annum,".

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

"PART II—MISCELLANEOUS PROVISIONS

"Subpart A. Manufacturers of stills.

"Subpart B. Nonbeverage domestic drawback claimants.

"Subpart C. Recordkeeping by dealers.

"Subpart D. Other provisions."

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

"Part II. Miscellaneous provisions."

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking "**and rate of tax**" in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking "and rate of tax" in the section heading,

(ii) by striking "(a) ELIGIBILITY FOR DRAWBACK.—", and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

"Subpart C—Recordkeeping by Dealers

"Sec. 5121. Recordkeeping by wholesale dealers.

"Sec. 5122. Recordkeeping by retail dealers.

"Sec. 5123. Preservation and inspection of records, and entry of premises for inspection."

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.",

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) WHOLESALE DEALERS.—For purposes of this part—

"(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

"(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

"(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

"(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer."

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking "section 5146" and inserting "section 5123".

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.",

(ii) by striking "section 5146" in subsection (c) and inserting "section 5123", and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c) RETAIL DEALERS.—For purposes of this section—

"(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

"(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

"(3) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3)."

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

"Subpart D—Other Provisions

"Sec. 5131. Packaging distilled spirits for industrial uses.

"Sec. 5132. Prohibited purchases by dealers."

(9) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting "(as defined in section 5121(c))" after "dealer" in subsection (a).

(10) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

"(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

"(b) PENALTY AND FORFEITURE.—

"For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302."

(11) Subsection (b) of section 5002 is amended—

(A) by striking "section 5112(a)" and inserting "section 5121(c)(3)",

(B) by striking "section 5112" and inserting "section 5121(c)",

(C) by striking "section 5122" and inserting "section 5122(c)".

(12) Subparagraph (A) of section 5010(c)(2) is amended by striking "section 5134" and inserting "section 5114".

(13) Subsection (d) of section 5052 is amended to read as follows:

"(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e)."

(14) The text of section 5182 is amended to read as follows:

"For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122."

(15) Subsection (b) of section 5402 is amended by striking "section 5092" and inserting "section 5052(d)".

(16) Section 5671 is amended by striking "or 5091".

(17)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(18)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended—

(i) by striking "this part" each place it appears and inserting "this subchapter", and

(ii) by striking "this subpart" in section 5732(c)(2) (as so redesignated) and inserting "this subchapter".

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking "(except the tax imposed by section 5131)" each place it appears.

(C) Subsection (c) of section 5733, as redesignated by subparagraph (A), is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end thereof the following:

"Sec. 5732. Payment of tax.

"Sec. 5733. Provisions relating to liability for occupational taxes.

"Sec. 5734. Application of State laws."

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(19) Subsection (b) of section 6071 is amended by striking "section 5142" and inserting "section 5732".

(20) Paragraph (1) of section 7652(g) is amended—

(A) by striking "subpart F" and inserting "subpart B", and

(B) by striking "section 5131(a)" and inserting "section 5111(a)".

(21) The table of sections for subchapter D of chapter 51 is amended by striking the item relating to section 5276.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994, but shall not apply to taxes imposed for periods before such date.

TITLE II—MODIFICATIONS TO TAX ON DIESEL FUEL

SEC. 201. MODIFICATIONS TO TAX ON DIESEL FUEL.

(a) IN GENERAL.—Subparts A and B of part III of subchapter A of chapter 32 (relating to manufacturers excise taxes) are amended to read as follows:

"Subpart A—Gasoline and Diesel Fuel

"Sec. 4081. Imposition of tax.
"Sec. 4082. Exemptions.
"Sec. 4083. Definitions and special rule.
"Sec. 4084. Cross references.

"SEC. 4081. IMPOSITION OF TAX.

"(a) TAX IMPOSED.—

"(1) TAX ON REMOVAL, ENTRY, OR SALE.—

"(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

"(i) the removal of a taxable fuel from any refinery,

"(ii) the removal of a taxable fuel from any terminal,

"(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

"(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

"(B) EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS.—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk to a terminal if the person removing or entering the taxable fuel and the operator of such terminal are registered under section 4101.

"(2) RATES OF TAX.—

"(A) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(i) the Highway Trust Fund financing rate,

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate, and

"(iii) the deficit reduction rate.

"(B) RATES.—For purposes of subparagraph (A)—

"(i) the Highway Trust Fund financing rate is—

"(I) 11.5 cents per gallon in the case of gasoline, and

"(II) 17.5 cents per gallon in the case of diesel fuel,

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon, and

"(iii) the deficit reduction rate is 2.5 cents per gallon.

"(b) TREATMENT OF REMOVAL OR SUBSEQUENT SALE BY BLENDER.—

"(1) IN GENERAL.—There is hereby imposed a tax at the rate specified in subsection (a) on taxable fuel removed or sold by the blender thereof.

"(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

"(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

"(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

"(c) TAXABLE FUELS MIXED WITH ALCOHOL AT REFINERY, ETC.—

"(1) REDUCED RATES.—Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting rates which are 1⁹⁄₁₀ of the otherwise applicable rates in the case of the removal or entry of any taxable fuel for use in producing at the time of such removal or entry a qualified alcohol mixture. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing such a mixture after the time of such removal or entry.

"(2) LATER SEPARATION OF FUEL FROM QUALIFIED ALCOHOL MIXTURE.—If any person separates the taxable fuel from a qualified alcohol mixture on which tax was imposed under subsection (a) at the otherwise applicable Highway Trust Fund financing rate (or its equivalent) by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) OTHERWISE APPLICABLE RATES.—In the case of the Highway Trust Fund financing rate, the otherwise applicable rate is—

"(i) 6.1 cents per gallon in the case of gasoline, and

"(ii) 12.1 cents per gallon in the case of diesel fuel.

In the case of a qualified alcohol mixture none of the alcohol in which consists of ethanol, the preceding sentence shall be applied by substituting '5.5 cents' for '6.1 cents' and '11.5' for '12.1'.

"(B) QUALIFIED ALCOHOL MIXTURE.—The term 'qualified alcohol mixture' means any mixture of a taxable fuel if at least 10 percent of such mixture is alcohol.

"(C) ALCOHOL DEFINED.—The term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

"(4) TERMINATION.—Paragraph (1) shall not apply to any removal or sale after September 30, 2000.

"(d) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1999, the Highway Trust Fund financing rate under subsection (a)(2) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995.

"(3) DEFICIT REDUCTION RATE.—On and after October 1, 1995, the deficit reduction rate under subsection (a)(2) shall not apply.

"(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"SEC. 4082. EXEMPTIONS.

"(a) IN GENERAL.—The tax imposed by section 4081 shall not apply to diesel fuel—

"(1) which the Secretary determines is destined for a nontaxable use,

"(2) which is indelibly dyed in accordance with regulations which the Secretary shall prescribe, and

"(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

"(b) NONTAXABLE USE.—For purposes of this section, the term 'nontaxable use' means—

"(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of the imposition of tax on any sale thereof,

"(2) any use in a train, and

"(3) any use described in section 6427(b)(1).

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

"(d) CROSS REFERENCE.—

"For tax on train and certain bus uses of fuel purchased tax-free, see section 4041(a)(1).

"SEC. 4083. DEFINITIONS AND SPECIAL RULE.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) gasoline, and

"(B) diesel fuel.

"(2) GASOLINE.—The term 'gasoline' includes, to the extent prescribed in regulations—

"(A) gasoline blend stocks, and

"(B) products commonly used as additives in gasoline.

For purposes of subparagraph (A), the term 'gasoline blend stock' means any petroleum product component of gasoline.

"(3) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(b) CERTAIN USES DEFINED AS REMOVAL.—If any person uses (other than in the production of gasoline, diesel fuel, or special fuels referred to in section 4041) taxable fuel, such use shall for the purposes of this chapter be considered a removal.

"SEC. 4084. CROSS REFERENCES.

"(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

"(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

"(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

"Subpart B—Aviation Fuel

"Sec. 4091. Imposition of tax.

"Sec. 4092. Exemptions.

"Sec. 4093. Definitions.

"SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of aviation fuel by the producer or the importer thereof or by any producer of aviation fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A) the Airport and Airway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 17.5 cents per gallon.

"(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(4) TERMINATION OF RATES.—

"(A) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1996.

"(B) The Leaking Underground Storage Tank Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall be—

"(A) 4.1 cents per gallon in the case of the sale of any mixture of aviation fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the aviation fuel in such mixture was not taxed under subparagraph (B), and

"(B) 4.56 cents per gallon in the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be ⅛ cent per gallon.

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at the Airport and Airway Trust Fund financing rate equivalent to 4.1 cents per gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 2000.

"(d) LOWER RATES OF TAX ON ALCOHOL MIXTURES NOT MADE FROM ETHANOL.—In the case of a mixture described in subsection (c)(1)(A)(i) none of the alcohol in which is ethanol—

"(1) subsections (c)(1)(A) and (c)(2) shall each be applied by substituting rates which are 0.6 cents less than the rates contained therein, and

"(2) subsection (c)(1)(B) shall be applied by substituting rates which are 1⅛ of the rates determined under paragraph (1).

"SEC. 4092. EXEMPTIONS.

"(a) NONTAXABLE USES.—The Airport and Airway Trust Fund financing rate under by section 4091 shall not apply to aviation fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(l)(2)(A)).

"(b) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply to aviation fuel sold to a producer of such fuel.

"(c) SUPPLIES FOR VESSELS AND AIRCRAFT.—Under regulations prescribed by the Secretary, the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)).

"SEC. 4093. DEFINITIONS.

"(a) AVIATION FUEL.—For purposes of this subpart, the term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) who elects to register under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, blender, or wholesale distributor of aviation fuel, or

"(ii) a dealer selling aviation fuel exclusively to producers of aviation fuel.

"(C) REDUCED RATE PURCHASERS TREATED AS PRODUCERS.—Any person to whom aviation fuel is sold at a reduced rate under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells aviation fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer."

(b) CIVIL PENALTY FOR USING UNTAXED FUEL FOR TAXABLE USE.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6714. EXEMPT-USE DIESEL FUEL SOLD FOR USE OR USED IN TAXABLE USE.

"(a) IMPOSITION OF PENALTY.—If diesel fuel which is dyed in accordance with section 4082—

"(1) is sold by any person for any use which such person knows or has reason to know is not a nontaxable use, or

"(2) is used by any person for a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed,

then, in addition to the tax, such person shall pay a penalty on such sale or use.

"(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) on any sale or use shall be the greater of—

"(1) $1,000, or

"(2) the product of the number of gallons so sold or used and twice rate of tax under section 4081 on diesel fuel.

"(c) DEFINITIONS.—For purposes of this section, the terms 'nontaxable use' and 'diesel fuel' have the respective meanings given such terms by sections 4082 and 4083."

(2) CLERICAL AMENDMENT.—The table of sections for such part I is amended by adding at the end thereof the following new item:

"Sec. 6714. Exempt-use diesel fuel sold for use or used in taxable use."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended by striking ", section 4081(c), or section 4091(c)" and inserting "or section 4081(c)".

(2) Subsection (a) of section 4101 is amended by striking "4081" and inserting "4041(a)(1), 4081,".

(3) Section 4102 is amended by striking "gasoline" and inserting "any taxable fuel (as defined in section 4083)".

(4) Paragraph (1) of section 4041(a) is amended to read as follows:

"(1) TAX ON DIESEL FUEL IN CERTAIN CASES.—

"(A) IN GENERAL.—There is hereby imposed a tax on any diesel fuel (as defined in section 4083)—

"(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or a diesel-powered train for use as a fuel in such vehicle or train, or

"(ii) used by any person as a fuel in a diesel-powered highway vehicle or a diesel-powered train unless there was a taxable sale of such fuel under clause (i).

"(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of diesel fuel if there was a taxable sale of such fuel under section 4081 and the tax thereon was not credited or refunded.

"(C) RATE OF TAX.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate on diesel fuel and the deficit reduction rate in effect under section 4081 at the time of such sale or use.

"(ii) HIGHWAY RATE NOT TO APPLY TO TRAINS.—The Highway Trust Fund financing rate shall not apply to any sale for use, or use, of fuel in a train.

"(iii) CERTAIN BUS USES.—If the limitation in section 6427(b)(2)(A) applies to fuel sold for use or used in an automobile bus, the Highway Trust Fund financing rate shall be 3 cents per gallon and the deficit reduction rate shall not apply."

(5) Paragraph (2) of section 4041(a) is amended by striking "or paragraph (1) of this subsection" and by inserting "on gasoline" after "Highway Trust Fund financing rate".

(6) Paragraph (2) of section 4041(c) is amended by striking "any product taxable under section 4081" and inserting "gasoline (as defined in section 4083)".

(7) Paragraph (2) of section 4041(d) is amended—

(A) by striking "(other than a product taxable under section 4081)" and inserting "(other than gasoline (as defined in section 4083))", and

(B) by striking "section 4091" and inserting "section 4081".

(8) Paragraph (3) of section 4041(d) is amended by striking "(other than any product taxable under section 4081)" and inserting "(other than gasoline (as defined in section 4083))".

(9) Subparagraph (A) of section 4041(k)(1) is amended by striking "sections 4081(c) and 4091(c), as the case may be" and inserting "section 4081(c)".

(10) Subparagraph (B) of section 4041(m)(1) is amended by striking "section 4091(d)(1)" and inserting "section 4091(c)(1)".

(11) Section 6206 is amended by striking "4041 or 4091" and inserting "4041, 4081, or 4091".

(12) Paragraph (1) of section 6302(f) is amended by inserting "on gasoline" after "section 4081" and after "such tax".

(13) Paragraph (1) of section 6412(a) is amended by striking "gasoline" each place it appears (including the heading) and inserting "taxable fuel".

(14) The heading of paragraph (4) of section 6416(a) is amended by striking "GASOLINE" and inserting "GASOLINE AND DIESEL FUEL".

(15) Sections 6420(c)(5) and 6421(e)(1) are each amended by striking "section 4082(b)" and inserting "section 4083(a)".

(16) Subsection (b) of section 6427 is amended—

(A) by striking "if any fuel" in paragraph (1) and inserting "if any diesel fuel (as defined in section 4083(a))", and

(B) by striking "4091" each place it appears and inserting "4081".

(17)(A) Paragraph (1) of section 6427(f) is amended by striking "4091(c)(1)(A), or 4091(d)(1)(A)" and inserting "or 4091(c)(1)(A)".

(B) Paragraph (2) of section 6427(f) is amended to read as follows:

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and

"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof."

(18) Subsection (h) of section 6427 is amended by striking "section 4082(b)" and inserting "section 4083(a)(2)".

(19) Paragraph (3) of section 6427(i) is amended—

(A) by striking "GASOHOL" in the heading and inserting "ALCOHOL MIXTURE", and

(B) by striking "gasoline used to produce gasohol (as defined in section 4081(c)(1))" in subparagraph (A) and inserting "gasoline or diesel fuel used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))".

(20) The heading of paragraph (4) of section 6427(i) is amended by inserting "4081 OR" before "4091".

(21) Subsection (l) of section 6427 is amended to read as follows:

"(l) NONTAXABLE USES OF AVIATION FUEL TAXED UNDER SECTION 4091.—

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraphs (3) and (4) of this subsection, if—

"(A) any diesel fuel on which tax has been imposed by section 4081, or

"(B) any aviation fuel on which tax has been imposed by section 4091,

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4081 or 4091, as the case may be.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means—

"(A) in the case of diesel fuel, any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of the imposition of tax on any sale thereof, and

"(B) in the case of aviation fuel, any use which is exempt from the tax imposed by section 4041(c)(1) other than by reason of the imposition of tax on any sale thereof.

"(3) LIMIT ON REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—Paragraph (1) shall not apply to so much of the tax imposed by section 4081 or 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft (other than as supplies for vessels or aircraft, within the meaning of section 4221(d)(3)).

"(4) NO REFUND OF DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the deficit reduction rate imposed by such section unless such fuel was used by a State or any political subdivision thereof."

(22) Paragraph (1) of section 9503(b) is amended—

(A) by striking "gasoline)," in subparagraph (E) and inserting "gasoline and diesel fuel), and",

(B) by striking subparagraph (F), and

(C) by redesignating subparagraph (G) as subparagraph (F).

(23) Subparagraph (B) of section 9503(b)(4) is amended by striking ", 4081, and 4091" and inserting and 4081".

(24) Subparagraph (D) of section 9503(c)(6) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(25) Paragraph (2) of section 9503(e) is amended—

(A) by striking ", 4081, and 4091" and inserting "and 4081", and

(B) by striking ", 4081, or 4091" and inserting "or 4081".

(26) Subsection (b) of section 9508 is amended—

(A) by inserting "and diesel fuel" after "gasoline" in paragraph (2), and

(B) by striking "diesel fuel and" in paragraph (3).

(27) The table of subparts for part III of subchapter A of chapter 32 is amended by striking the items relating to subparts A and B and inserting the following new items:

"Subpart A. Gasoline and diesel fuel.

"Subpart B. Aviation fuel."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1993.

SEC. 202. FLOOR STOCKS TAX.

(a) IN GENERAL.—There is hereby imposed a floor stocks tax on diesel fuel held by any person on April 1, 1993.

(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

(c) LIABILITY AND PAYMENT OF TAX.—

(1) LIABILITY FOR TAX.—A person holding the diesel fuel on April 1, 1993, to which the tax imposed by this section applies shall be liable for such tax.

(2) METHOD OF PAYMENT.—The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

(3) TIME FOR PAYMENT.—The tax imposed by this section shall be paid on or before September 30, 1993.

(d) DEFINITIONS.—For purposes of this section—

(1) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4083(a) of such Code.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(e) EXCEPTIONS.—

(1) EXEMPT HOLDERS.—The tax imposed by this section shall not apply to fuel held by any person if no tax would have been imposed by section 4081 of such Code on any prior removal or entry of such fuel had such section 4081 applied to all prior removals and entries of such fuel.

(2) PERSONS ENTITLED TO CREDIT OR REFUND.—The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

(3) COMPLIANCE WITH DYING REQUIRED.—Paragraphs (1) and (2) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dying or marking such fuel.

(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081.

SEC. 203. AVAILABILITY OF AMOUNTS IN HIGHWAY TRUST FUND FOR TRANSITION ASSISTANCE.

The purposes for which amounts may be authorized and expended under section 1040 of the Intermodal Surface Transportation Efficiency Act of 1991 shall include grants to assist businesses having annual sales of less than 50,000,000 gallons of diesel fuel to defray the one-time costs of installing additional storage tanks to comply with the fuel dying requirements imposed by the amendments made by this title.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MATSUI] since it is his bill.

Mr. MATSUI. Mr. Speaker, I thank the gentleman from Florida [Mr. GIBBONS] for yielding this time to me, and, before I begin, I have two letters dated July 31, 1992; one from the gentleman from New Jersey [Mr. ROE], the chairman of the Committee on Public Works and Transportation; and the other is a response by myself to Mr. ROE, and basically these letters confirmed that the jurisdictional issue that Public Works might have had, does not exist because the coissue of authorization of the $40 million for conversion that is listed in this bill is subject to both authorization and appropriation at some future date by the Committee on Public Works and Transportation.

The letters referred to are as follows:

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION,
Washington, DC, July 31, 1992.

Hon. ROBERT T. MATSUI,
House of Representatives, Washington, DC.

DEAR BOB: It is my understanding that the House will soon be considering H.R. 5649, a bill to amend the Internal Revenue Code of 1986 to phase-out the occupational taxes relating to distilled spirits, wine and beer, and to impose the tax on diesel fuel in the same manner as the tax on gasoline, under suspension of the House Rules.

Section 203 of the bill, as ordered reported, would provide a new purpose for which funds authorized and expended under section 1040 of the Intermodal Surface Transportation Efficiency Act of 1991 could be used. That purpose would "include grants to assist businesses having annual sales of less than 50,000,000 gallons of diesel fuel to defray the one-time costs of installing additional storage tanks to comply with certain fuel dyeing requests."

It is our understanding that while the language of section 203 itself could be read as to provide that authority immediately, it is the intent of your Committee that this section be subject to future authorization and appropriation action by the committees of jurisdiction. I respectfully request that you confirm that understanding and include our exchange of correspondence on this matter at

the point in the record on debate of H.R. 5649.

With warmest personal regards.

Sincerely,

ROBERT A. ROE,
Chairman.

HOUSE OF REPRESENTATIVES,
Washington, DC, July 31, 1992.

Hon. ROBERT A. ROE,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR BOB: Thank you for your letter on H.R. 5649, a bill to amend the Internal Revenue Code of 1986 to phase-out the occupational taxes relating to distilled spirits, wine and beer, and to impose the tax on diesel fuel in the same manner as the tax on gasoline.

Your understanding is correct. It is the intent of our Committee that section 203 shall only take effect as authorized by the committees of jurisdiction of Congress in a law enacted after the date of the enactment of this bill. In fact, the Committee Report states that this provision is "subject to future authorization and appropriation by the Congressional committees of jurisdiction".

Per your request, I would by happy to include our letters in the record and I want to thank you for your cooperation on this matter.

Sincerely,

ROBERT T. MATSUI,
Member of Congress.

Mr. Speaker, I rise today to strongly encourage my colleagues to enact legislation that I have proposed, H.R. 5649. This legislation accomplishes two things: First, it repeals an antiquated and inequitable tax on producers, distributors, and retailers of licensed beverages. Second, it contains language that will improve the enforcement of the collection of Federal excise taxes on diesel fuel, thereby stamping out prevalent tax evasion by organized crime groups and tax cheats.

The special occupational tax was originally established in the 1860's to generate revenue for the Civil War. It is essentially a user fee imposed on businesses that manufacture, distribute, or sell alcohol. It is not an excise tax, and the taxpayer receives no license or other benefit for its payment. The SOT was basically forgotten and unenforced until the 1987 Budget Reconciliation Act, when, without any hearings, the tax was rediscovered and increased—in some cases by 1000 percent.

This tax has fallen exceptionally hard on small retail stores. Whether it is a seasonal restaurant, an Elks lodge, a convenience or grocery store, a campground, or florist that delivers wine with flowers, no one is spared the tax. These small businesses incur the fee at substantial cost as they have trouble passing the tax on to consumers because they have to price their products competitively. Large producers are probably better able to recoup some of the tax because they can increase their prices by only a small amount. However, the unfairness of this tax is readily apparent when you note that a chain of four neighborhood food stores pays the same annual special occupational tax as the Nation's largest single-site brewery or distillery plant.

The GAO has repeatedly recommended repeal of this tax. A September 1990 GAO report states that "special occupational taxes are relatively costly to administer particularly when considering the small amount of revenue generated." In addition, that report notes that the Bureau of Alcohol, Tobacco and Firearms has had problems identifying all of the alcohol retailers subject to the tax and collecting amounts due from them. There is no question that this arcane and antiquated tax is a burden on the tax system and on small businesses, and it needs to be repealed.

Mr. Speaker, this legislation also addresses an enormous problem for both Federal and State governments—tax evasion on sales of diesel fuel. The Joint Committee on Taxation has estimated that the adoption of this proposal would increase revenues by approximately $718 million over the next 5½ years. Simply by collecting taxes owed to the Federal Government—$718 million. That is money that will be taken out of the hands of tax cheaters and organized crime groups, 90 percent of which will go into the highway trust fund to be used for improved bridge and highway infrastructure and approximately 10 percent of which is dedicated to deficit reduction.

The reduction of evasion is accomplished in my proposal by doing two things. First, the bill would move the point of tax collection upstream to the point of first distribution. Doing so will reduce opportunities for creating daisy chains to conceal fraudulent transactions. This same change was effected in 1987, to address gasoline tax evasion with impressive results.

The second part of the proposal would deter evasion by dyeing tax-exempt fuel. This is not an original idea. Motor fuels are dyed in 19 countries worldwide for tax compliance purposes. In the Canadian province of Quebec, diesel fuel has been dyed since 1972. Their collections increased approximately 100 percent in the 2 years following implementation of the change. In the State of Mississippi today, diesel fuel for nonhighway use is dyed for State tax compliance purposes.

Not only is the thought not original for tax compliance purposes, but it is designed to compliment EPA regulations. Under the Clean Air Act, as of October 1993, high sulfur diesel must be dyed and may only be used for off-road purposes. Both the Clean Air Act and my proposal would merge to provide that dyed fuel must remain off-road because it is either high in sulfur or tax exempt.

The enactment of H.R. 5649 is necessary because the current structure of the diesel excise tax makes it simply too attractive for cheaters. The volume of gallons sold and the number of different firms within the distribution chain make it difficult to follow the product from the refiners through multiple wholesalers to the ultimate retailer. In addition, industry characteristics that encourage cheating—a cash industry that is highly price sensitive—will never change. Sales volumes increase dramatically in this industry by selling the product just a few cents below competition.

Some of my colleagues have suggested that diesel fuel tax evasion is simply a regional problem in the Northeast. However, the Criminal Investigation Division of the IRS national office will tell you that diesel fuel tax evasion schemes have been investigated and prosecuted in every geographic region of the country.

Using my home State of California as an example, it is easy to see the effect diesel tax cheating has on State and Federal revenue nationwide. In California, the State and Federal excise taxes on diesel fuel together account for approximately 45 cents per gallon, or roughly 40 percent of the price per gallon. At present, the California State Board of Equalization has, thus far, identified approximately 500 diesel accounts suspected of evasion. Of these accounts, 89 have been audited and determined to owe an additional $20,369,956.

I am told that these investigations are just the tip of the iceberg regarding a nationwide problem. Diesel tax cheating is so extensive now that the U.S. Department of Transportation currently publishes a newsletter called "Fuel Tax Evasion Highlights." Most indicative of the problem, however, is the fact that the industry itself came to me with this proposal to increase compliance on its own taxes because the tax cheats are putting long-established and legitimate companies out of business.

This past May, at a Public Works Subcommittee hearing, the Federal Highway Administration testified that tax evasion schemes eat up between 15 and 25 percent of the taxes on diesel fuel. It is time to do something about this egregious evasion—we must stop organized crime rings and tax cheaters.

Mr. Speaker, H.R. 5649 is good legislation. Not only does it repeal a tax that is inequitable and more costly to administer than it is worth, but it also seeks to enforce a tax that is already on the books, but is being blatantly ignored by flagrant tax cheats. At a time when the Federal Government faces an embarrassing and glaring deficit, and State and local governments can barely, if at all, meet their budgets, it is time to crack down on tax evasion. It is responsible tax policy, and I urge my colleagues to vote in favor of this bill.

Mr. Speaker, I might add that there are some farm groups opposed to this legislation, particularly the latter part

as it pertains to the diesel fuel compliance. I will only say that if, in fact, this legislation goes down, I intend to introduce immediately, and seek active cosponsorship, to make it a personal priority that we will then come up with a counter legislation that will collect the tax on all potential taxpayers at the terminal rack, and then those that are tax exempt can ask for a refund by the Federal Government. We tried to do this in 1987 because we need compliance on this particular issue. We cannot go along and lose $718 million every 5 years while the Federal Government has $400 billion per annum deficits, and so this matter, if we lose it, will not, and here I will pursue it in 1993, and I am hopeful that we will pass it because we have the SOT, the Civil War tax, that should be repealed, and certainly we want to get rid of tax cheats and organized crime that are cheating as well.

□ 1400

Mr. McGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5649. The bill has certainly been adequately explained by my colleague, the gentleman from California [Mr. MATSUI].

Mr. Speaker, as my colleague pointed out, there is some opposition to the bill. With that understanding in mind, I yield 2½ minutes to our colleague, the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Speaker, I thank the ranking minority member for yielding me this time.

Regrettably, Mr. Speaker, I must rise in opposition to this bill today. It is not because I disagree with the gentleman from California in his attempt to ultimately repeal the special occupational tax. Frankly, I think that repeal makes sense. I have supported it, and I will continue to support it.

However, the circumstances in which we find ourselves are that we are linking legislative proposals with revenue. While I support the legislative proposal to repeal the special occupational tax, which I think is unwarranted and to which I raised objection back in 1987 when it was increased, I fully support the repeal. However, I do not believe that the method by which the gentleman from California has proposed to pay for it is a method that makes sense or is fair to those of us in rural America. I think that simply replaces one problem with another.

The proposal to dye fuel will almost certainly require family farmers to have dual tanks. It will almost certainly require a capital outlay on the part of service stations in small towns and on the part of farmers and others that I do not believe they should be required to have to make at this point. We have what has seemed to be a $5 billion problem. The gentleman from California [Mr. MATSUI] offers a proposal that raises approximately $700 million. I would much prefer that we first have concentrated hearings in this area, and that, second, we see the feasibility study that is now underway down at the Department of Energy with respect to dyeing fuel, and then combine that with a legislative proposal that really does address the full $5 billion problem over a 5-year period.

So on behalf of myself and my colleague, the gentleman from Iowa [Mr. GRANDY], I am constrained to oppose this legislation. I might say that my colleague, the gentleman from Iowa, had intended to be here today and ask for a vote, and I will ask for a vote in his stead. The gentleman from Iowa [Mr. GRANDY] was on an airplane that had mechanical trouble today, so he is stranded somewhere in an airport. He had intended to be on the floor, and his statement in opposition to this revenue source that is being proposed will have to be supplied under general leave.

Let me restate again the situation. The gentleman from California [Mr. MATSUI] has proposed something that I support and think is fully reasonable with respect to the special occupational tax. The proposal on the affirmative side is absolutely essential, and we ought to adopt it, if not now, at some other point, but it ought to be matched in my judgment with a revenue source that does not put the cost of doing this on the backs of family farmers in this country.

The American Farm Bureau opposes that revenue source, along with the National Farmers Union, the National Council of Farmer Cooperatives, and the National Wheat Growers Association, not because they are selfish, not because they do not understand that there is a problem here, but because they believe this transfers the problem onto the backs of family farmers who are in deep trouble at this point.

Mr. Speaker, I intend to ask for a rollcall vote on this legislation, and I hope we can resolve this problem in some other way at some future point.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I appreciate the efforts of the gentleman from California to repeal the burdensome and inefficient special occupational tax on alcohol. My colleagues will recall that the 1987 Budget Reconciliation Act increased this tax by as much as 1000 percent for retail liquor and beer dealers.

The increase has fallen particularly hard on small businesses, the little mom and pop stores. It is simply inequitable. Furthermore, the General Accounting Office has determined that the special occupational taxes are both difficult to collect and administer.

At the same time, Mr. Speaker, I do have concerns about the revenue raiser used to pay for this measure. As chairman of the Oversight Subcommittee, I have spent an enormous amount of time on gasoline and diesel excise tax evasion issues. The answer to the evasion problem is not to change the point of collection. Instead, we need better enforcement by the Internal Revenue Service. As I looked into these issues, I was shocked to find that the Internal Revenue Service apparently puts a very low priority on the excise tax area. Equally shocking is the fact that the IRS has no computerized means with which to track whether people pay the excise taxes that they owe.

Mr. Speaker, I would hope as we move along that we might find another approach to pay for the repeal of the special occupational tax on alcohol. I am concerned about the cash-flow burdens that the diesel tax change would put on our small wholesale oil marketers. Rather than change the law, I prefer that we encourage the Internal Revenue Service to devote resources to diesel and gasoline excise tax collection and enforce the laws already on the books.

TEXAS OIL MARKETERS
ASSOCIATION,
Austin, TX, August 3, 1992.

Hon. JAKE PICKLE,
U.S. Congress, Washington, DC.

DEAR CONGRESSMAN PICKLE: The Texas Oil Marketers Association is opposed to Congressman Matsui's (D-Cal.) bill, H.R. 5649, which will move the collection point of the federal excise tax from the independent petroleum marketers' wholesale level to the refinery rack. The legislation also removes the Special Occupational Tax on alcohol retailers.

This legislation is similar to the major supplier contracts TOMA members must sign with their supplier in order to purchase branded products: "The large print giveth, and the small print taketh away." TOMA supports the elimination of the S.O.T. on alcohol, but not at the expense of losing the collection of the excise tax on diesel.

TOMA supports strong enforcement of the collection of the excise tax on motor fuels and has continually encouraged Congress to instruct the IRS to develop a clear audit trail on the collection of the excise tax. Where the tax is collected does not have any effect on the evasion problem if the IRS does not have an audit trail that will track each gallon sold.

If the IRS can track a $10 interest payment to an individual through Form 1099, then why do they say it is impossible to develop an audit trail on excise taxes on motor fuels? To the independent petroleum marketer, the picture is clear. The IRS receives more credit and "glory" when they file against an individual for 15 cents versus building a case against a million dollar excise tax evader.

The movement of the collection point on the excise tax on diesel will not solve the evasion problem. A vote for the Matsui bill will be just another step toward driving the independent petroleum marketers out of business.

Please vote against the Matsui Bill, H.R. 5649.

Sincerely,

JIM SHILLINGBURG,
CAE, Executive Vice President.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Speaker, I rise today in strong support of H.R. 5649, a measure that will provide tax relief for hundreds of thousands of small businesses all across the country. I also want to compliment my colleague from California, BOB MATSUI, for his leadership on this issue.

After Congress passed the Budget Reconciliation Act in 1987, small business retailers learned that, as part of this package, Congress had revived a little known measure, known as the special occupation tax, on alcohol [SOT].

The SOT is imposed on any retailer that sells alcoholic beverages. While it's an antiquated tax, dating back to the Civil War, its effect on small businesses is very real, especially when the 1987 Reconciliation Act raised it more than 1,000 percent.

Imagine the surprise when small businesses such as grocery and convenience stores, restaurants, fraternal organizations, taverns, and others found out that they had to pay the Federal Government yet another tax.

There has been periodic, but consistent, criticism of this tax. As early as 1976, the General Accounting Office called for repeal of the SOT and, in 1990, GAO once again studied the tax and found it inequitable and inefficient, and recommended repeal. Mr. Speaker, I believe the repeal of this unfair tax coupled with enforcement of diesel excise tax is an important proposal. Gasoline retailers, truck stop operators, and others who sell diesel fuel, cannot compete with dishonest individuals who manipulate the current system and avoid paying diesel excise taxes.

These criminals are able to sell their fuel at a much lower price, threatening the livelihood of many honest gasoline retailers. In addition, the Federal Government cannot afford this practice, considering the highway trust fund is cheated out of more than $700 million.

H.R. 5649 provides a one two punch for small business. It repeals an inequitable and inefficient tax, and helps to eliminate diesel excise tax evasion. I urge my colleagues to support this measure.

Mr. Speaker, in closing, I would say that this does not violate any law or it does not affect anybody who is not doing anything that is not against the law.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, I want to thank the chairman of the subcommittee for yielding this time to me, and I want to congratulate the gentleman from California [Mr. MATSUI] for bringing this bill to the floor.

This bill is not only needed because it repeals the special occupational tax, which everyone here has said should be repealed, but this tax was increased by a tremendous amount in 1987, for small businesses, an increase from $24 to $250. For small businesses this imposes a burden where there is really no justification at all for the imposition of this tax.

I also want to congratulate the gentleman from California [Mr. MATSUI] for complying with the Budget Act in bringing forward the revenue that is necessary in order to comply with the deficit reduction program. His bill will not only pay for the repeal of the special occupational tax but provide some additional revenue for deficit reduction.

The bill also deals with a very important problem. Everyone here acknowledges that we have an evasion of the diesel tax, the excise tax. The gentleman from California [Mr. MATSUI] has come forward with a proposal that will deal with that evasion and reduce the amount of taxes that are being lost. It complies with the same means of collection that we have with gasoline, and as has been pointed out by previous speakers, it sets up a system of fair competition so that those people who are avoiding the tax do not have an advantage over those people who are duly paying the tax.

□ 1410

Mr. Speaker, I urge my colleagues to support H.R. 5649. It is a good bill on the tax that it repeals, and it is a good bill in the way it is funded.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MATSUI].

Mr. MATSUI. Mr. Speaker, just to sum up, I realize that the farmers have had problems. They have sent out a Dear Colleague letter with respect to this legislation. It is not the part that repeals the special occupancy tax. Everyone favors tax cuts; nobody favors tax increases. I guess this bill is probably symbolic of that.

But the fact of the matter is this does not raise taxes. What this proposal does is require greater compliance of existing tax laws. I know that some of the farm groups are making allegations that this will cost them literally thousands of dollars more to comply with the law, but I would have to say that this is not necessarily true.

In our legislation it would require either one of two things: they can either dye the nontax diesel fuel, or, alternatively, they can pay the tax at the terminal rack and seek a refund later if they do not want to go through some modifications.

Frankly, if in fact this measure goes down, then it is my intent to introduce legislation that will give them the option of only the latter. That is, they can pay the tax at the rack, just like withholding is done for wage earners, and then they can seek a refund at tax time. That will be the alternative and it will raise more money actually because what will happen is there will be a surge of revenues the first year, and I am sure the members of the Committee on Ways and Means will be able to use those revenues for good purposes in 1993, like to reduce the deficit and to require greater tax compliance.

Mr. Speaker, I hope the farm groups out there involved in this debate realize this matter will not be over. I expect this to pass tomorrow, but if it does not, there will be other ways to get greater compliance.

Mr. KANJORSKI. Mr. Speaker, as an original cosponsor of H.R. 3781, the precursor of this legislation, I rise in strong support of H.R. 5649. Our bill, H.R. 5649, will put an end to a nuisance tax which has created more problems than it has raised revenues.

Mr. Speaker, I first learned about the special occupational tax [SOT], in 1989 when a small Elks Club in my congressional district told me that they had just received a tax bill for $9,776.98 for a tax they had never heard about before, and which neither the IRS nor the Bureau of Alcohol, Tobacco and Firearms [BATF] had never attempted to collect. Much to the club's surprise, they were being dunned for taxes owed as far back as 50 years ago.

An investigation by my staff revealed that for many years a seldom-enforced section of the Internal Revenue Code imposed a nominal occupational tax on purveyors of distilled spirits—$25 per year from 1866 to 1940, $27.50 per year from 1941 to 1951, $50 per year from 1952 to 1959, and $54 per year from 1960 to 1988. The 1987 Budget Reconciliation Act increased the tax nearly fivefold, to $250 per year, and transferred administration over it from the IRS to the BATF.

With the major increase in the tax in 1988 the BATF began to more vigorously enforce the law and notify tavern owners of their obligations. For many tavern owners, however, this was the first time they had ever been notified by the Government that there even was a special occupational tax.

The BATF took the inflexible position that they were required to collect back taxes, interest, and penalties as far back as 1866, even if the tavern owners never received a notice that they owed taxes, and even if the tavern is owned by a nonprofit organization like the Elks, Moose, VFW, American Legion, or Knights of Columbus.

The BATF took this position even though the statute of limitation for most tax violations is 3 years, and even though the statute of limitation for violent crimes like kidnaping, arson, and robbery is rarely more than 5 years. Yet in this case the BATF said they were required to collect back taxes, interest, and penalties as far back as 1866 when the SOT was created. That is a 126 year statute of limitation, which is preposterous.

The BATF's position is based on a classic catch-22. It is based on the fact that there is no statute of limitation on tax violations when an individual fails to file a tax return. In this case, of course, the vast majority of people who did not pay failed to do so precisely because they did not know the tax existed. Nei-

ther IRS nor BATF had ever notified them about the tax before, and the tax required a special form, it was not just a line on the normal business income tax form. If these small businesses had been notified they undoubtedly would have paid because for most of the last century the tax was only $25, $27.50 or $50 a year. Since they did not know the tax existed, they did not file the required form, and consequently there is no statute of limitation.

The absurdity of the BATF's position is highlighted by the fact that it would require a business, even a nonprofit charitable group like the VFW or the American Legion, to keep its records as far back as 1866, which few businesses do. It has never been clear whether or not this includes the prohibition years when, of course, it was illegal to dispense alcoholic beverages.

The Elk's Club in my district was told it had to pay back taxes, interest, and penalties for the last 50 years, even though it was flooded in 1972 when the Susquehanna rose over its banks as a result of tropical storm Agnes. It lost all its records for years prior to 1972 in the flood.

As a result of this ludicrous situation, on May 9, 1989, I introduced legislation, H.R. 2285, to establish a reasonable statute of limitation. Sixty-eight of my colleagues from all across the United States cosponsored my bill. I reintroduced H.R. 2285 in the 102d Congress as H.R. 122.

In testimony before the House Ways and Means Committee on October 26, 1989, Assistant Secretary of the Treasury for Tax Policy Kenneth W. Gideon admitted that:

> This case involves a tax that for years before 1987 was insignificant and not well publicized. It appears that noncompliance in years before 1987 was due to the fact that many taxpayers were simply not aware of the tax. There is no evidence that dealers were attempting to avoid the tax.

As a result, the Assistant Secretary stated that the Treasury did not object to the passage of my bill.

Although the revenue impact of my bill was less than $2 million, the lack of action on miscellaneous tax legislation until this month, has prevented this worthwhile proposal from being adopted.

My colleague from California, Mr. MATSUI, has come to the logical conclusion that the entire SOT is a nuisance tax which is not worth the relatively meager revenue it brings in. This confirms informal advice I was given some time ago by BATF personnel who said that the processing of hundreds of thousands of SOT returns each year, and monitoring compliance, was hardly worth the effort for them, particularly given the paltry sums which were raised.

Although Mr. MATSUI's bill does not explicitly include a statute of limitation for past violations, it would be pointless and ludicrous for the BATF to dun unknowing businesses for 50-year-old violations of a tax that no longer exists.

One clear advantage of H.R. 5649 is that by eliminating the underlying tax, we know there will not be any further violations in the future.

Mr. Speaker, the existing law has made criminals out of honest businessmen who were never notified by the IRS or the BATF that they owed taxes. It then proceeded to treat these individuals worse than bank robbers, arsonists, kidnappers, and other violent felons. H.R. 5649 will put an end to this abuse, and will actually raise revenue because it contains an offset which will close a loophole that organized crime has used to avoid paying Federal excise taxes on diesel fuel.

Finally, let me note that some concern has been raised among farm groups that the revenue offset contained in H.R. 5649 will adversely affect farmers. I want to assure them that H.R. 5649 does not, in any way, affect the taxes paid by farmers on diesel fuel. Diesel fuel for off-road use by farmers continue to be tax exempt. Farmers will not be required to install additional storage tanks unless they have a need for substantial amounts of on-road diesel fuel as well as off-road diesel fuel. If they do need substantial amounts of both on-road and off-road diesel fuel, the bill provides a mechanism for them to receive financial assistance with the one-time installation cost of an additional storage tank. H.R. 5649 will not decrease the availability of diesel fuel for farmers or anyone else. A similar system of fuel distribution is already in use in Canada, a major agricultural producer, and there has never been a problem with it.

In short, Mr. Speaker, H.R. 5649 will close a tax loophole which has been exploited by organized crime, while eliminating a nuisance tax which has created a blizzard of cost-inefficient paperwork for hundreds of thousands of small businesses and small fraternal groups like the Moose, the Elks, the Knights of Columbus, the American Legion, and the VFW.

Mr. GRANDY. Mr. Speaker, the bill, H.R. 5649, addresses two separate issues; the first is the repeal of the special occupational tax [SOT]. The second is changing the point of collection of diesel fuel excise taxes and requiring the dyeing of diesel fuel.

While I support repeal of the $250 SOT annual retail licensing fee we should not shift the cost of its repeal to farmers who will be required to spend over $650 to install new fuel tanks as well as pay increased transportation costs for diesel fuel and more for liability insurance on the additional tanks. Simply swapping one problem for another is not an equitable solution to this problem.

No Ways and Means hearings have been held on the diesel fuel tax compliance issue generally and none have been held on possible solutions to the problem. To say that a hearing titled "Shortfalls in Highway Trust Fund Collections" at the Public Works and Transportation Subcommittee on Investigations and Oversight should serve as the basis for Ways and Means Committee action is poor precedent. The hearings did not focus on the compliance problem specifically nor on specific solutions to address any shortfall.

The problem and potential solutions should be studied by the Ways and Means Committee so we are sure any problem that may exist is clearly addressed by the solution. To say that this problem is so massive as to require a fix immediately does not hold water. Neither Treasury nor the IRS has come to the committee complaining of a revenue hemorrhage and our Oversight Subcommittee has not bothered to hold hearings.

However, if the hearing record from Public Works is what you want to base your justification upon, it says diesel fuel evasion is an annual billion dollar problem—$500 billion over the budget window. The proposed solution should at least approach raising the amount of revenue reportedly lost, but it does not even come close. Over the 5 year budget window, moving the collection point and dyeing diesel fuel will raise only $718 million—nothing to sneeze at—but with a reported $5 billion problem I think we should be able to address the reported problem more effectively. With all the trouble it causes, this solution still raises less than 15 percent of the reported revenue loss. I think we need to find a better solution if there is a problem.

Who says that dyeing diesel fuel is the only answer to whatever compliance problem may exist? We are not even sure whether it would work. The Department of Transportation has commissioned a feasibility study on the dyeing of diesel fuel. Congress should wait for the results of this study to be made available before acting on this proposal.

There are dozens of alternatives that could address this problem in a less intrusive manner. Didn't the IRS state at the Public Works hearing that a computer system relating to tax-free sales is feasible? Shouldn't Ways and Means at least look at a solution the IRS believes to be feasible? The IRS is currently working with industry, taxpayers/stakeholders to define burdens and costs of their possible computer system. The committee should listen to the IRS and hear about this option.

I would like to address the assistance funds available for purchase of additional fuel tanks required by this bill. The bill provides $40 million from the highway trust fund for grants. One estimate of what the additional storage tanks for farmers may cost is roughly $500 million per year. Even if you don't like our estimate of what this problem is, cut it in half or a quarter and the additional tanks required solely by farmers still dwarfs the money allocated to solving this problem. Home heating fuel companies as well as construction companies and other tax-exempt users of fuel are also eligible for the grants.

Finally, even if there really was enough money there in the trust fund to solve the tankage problem, that money must still be authorized and appropriated. Given the tight budget constraints those committees are working under, the tankage problem might not rise to the top of their priority list at authorization and appropriation time and no assistance will be provided for the purchase of tanks.

Mr. KYLE. Mr. Speaker, this bill, H.R. 5649 is an example of what is wrong with the legislative process, and why the American people are fed up with Government and demanding change.

Instead of just repealing the onerous Special Occupational Taxes [SOT's], H.R. 5649 simply trades one problem, one injustice, for another.

I support the repeal of SOT's. I had voted against the exorbitant increases that were enacted in 1987—increases that precipitated this legislation today. These taxes should be repealed.

But, the bill doesn't end there. It also attempts to attack the problem of diesel fuel tax evasion, and it should. However, it does so in a way that is expected to recoup only about

$718 million out of an estimated $5 billion evaded over 5 years. And, it imposes new costs of compliance on the agricultural industry that will amount to over $500 million. Other off-road users will also pay a price.

These off-road users are not the problem, at least the primary problem, in these evasion schemes. Yet, they are being forced to pay the price for it.

Mr. Speaker, this bill should not be considered on the suspension calendar. We ought to have an opportunity to amend it. It needs further hearings. We ought to move a bill that takes care of the SOT problem, without penalizing innocent bystanders.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5649.

The question was taken.

Mr. DORGAN of North Dakota. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

TAX TREATMENT OF LICENSED COTTON WAREHOUSES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5643) to amend the Internal Revenue Code of 1986 with respect to the treatment of certain amounts received by operators of licensed cotton warehouses.

The Clerk read as follows:

H.R. 5643

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY OPERATORS OF LICENSED COTTON WAREHOUSES.

(a) GENERAL RULE.—Section 451 of the Internal Revenue Code of 1986 (relating to general rule for taxable year of inclusion) is amended by adding at the end thereof the following new subsection:

"(h) SPECIAL RULES FOR OPERATORS OF LICENSED COTTON WAREHOUSES.—

"(1) IN GENERAL.—In the case of any taxpayer which is the operator of a licensed cotton warehouse and the taxable income of which is computed under an accrual method of accounting, such taxpayer shall not be required to accrue any amounts to be received for processing and storing cotton at such warehouse until such amounts are actually received.

"(2) INTEREST ON DEFERRED TAX LIABILITY.—

"(A) IN GENERAL.—If any deferred amount is received during any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of the interest determined under subparagraph (B) with respect to such deferred amount.

"(B) AMOUNT OF INTEREST.—The amount of interest determined under this subparagraph with respect to any deferred amount shall be determined—

"(i) on the amount of the tax for such taxable year which is attributable to such deferred amount,

"(ii) for the period beginning on the due date for the taxable year of the deferral and ending on the due date for the taxable year in which such deferred amount is received, and

"(iii) by using the Federal short-term rate in effect under section 1274 as of the due date for the taxable year in which such deferred amount is received, compounded semiannually.

"(3) TREATMENT AS INTEREST.—Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) LICENSED COTTON WAREHOUSE.—The term 'licensed cotton warehouse' means any warehouse for the storage of cotton which is licensed under the United States Warehouse Act (7 U.S.C. 241, et seq.) or under any similar State law.

"(B) DEFERRED AMOUNT.—The term 'deferred amount' means any amount which is includible in gross income for the taxable year but which would have been includible in gross income for a prior taxable year but for this subsection.

"(C) TAXABLE YEAR OF DEFERRAL.—The taxable year of the deferral is the taxable year for which the deferred amount would have been includible in gross income but for this subsection.

"(D) DUE DATE.—The term 'due date' means the date prescribed for filing the return of tax imposed by this chapter, determined without regard to any extension.

"(5) ELECTION.—This subsection shall apply to a taxpayer only if such taxpayer makes an election under this paragraph. Such an election shall apply to the taxable year for which made and for all subsequent taxable years unless revoked with the consent of the Secretary."

(b) CONFORMING AMENDMENT.—Subparagraph (N) of section 26(b)(2) of such Code is amended by striking "sections 453(1)(3)" and inserting "sections 451(h)(2), 453(1)(3)," .

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts accrued in taxable years beginning after December 31, 1991.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5643 allows operators of licensed cotton warehouses to postpone accrual of income related to processing or storing cotton until the taxpayer is legally able to collect the fees for such services. Such taxpayers would, however, be required to pay the Government an interest charge with respect to the deferral.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no requests for time and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5643.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TAX TREATMENT OF ALASKA NATIVE CORPORATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5658) relating to the tax treatment of certain distributions made by Alaska Native Corporations.

The Clerk read as follows:

H.R. 5658

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TAX TREATMENT OF CERTAIN DISTRIBUTIONS MADE BY ALASKA NATIVE CORPORATIONS.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, any qualified distribution made by a Native Corporation shall be treated as a distribution not made out of earnings and profits.

(b) QUALIFIED DISTRIBUTION.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified distribution' means any distribution to a Native (as defined in section 3 of the Alaska Native Claims Settlement Act) or descendant of a Native (as so defined) which—

(A) is made after the date of the enactment of the Alaska Native Claims Settlement Act, and

(B) which but for this section would have been treated as a dividend under chapter 1 of such Code.

(2) LIMITATION.—The aggregate amount of distributions made by any Native Corporation which may be treated as qualified distributions shall not exceed the lesser of—

(A) the aggregate amount realized by such Corporation on or before July 9, 1992 (or pursuant to an agreement entered into on or before such date), from the sale of any land or interest in land received by such Corporation pursuant to the Alaska Native Claims Settlement Act, or

(B) the aggregate bases (as determined pursuant to section 21(c) of such Act) of any land or interest in land received by such Corporation pursuant to such Act and sold on or before July 9, 1992 (or pursuant to an agreement entered into on or before such date), reduced by the aggregate bases of any land or interest in land sold in a sale referred to in subsection (c)(2)(B).

(c) ADJUSTMENTS TO AMOUNT REALIZED.—For purposes of subsection (b)(2)(A)—

(1) there shall be taken into account any amount realized by the Corporation indirectly through another entity in which such Corporation has an interest, but

(2) the following amounts shall be disregarded:

(A) Any amount realized directly or indirectly by the Corporation for the use of losses credits of such Corporation or of a corporation all of the stock of which is owned directly by such Corporation where such use would not have been allowable without regard to section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986, and repealed by section 5021 of the Technical and Miscellaneous Revenue Act of 1988).

(B) Any amount realized directly or indirectly by the Corporation from a special purpose sale of any land or interest in land where the loss incurred on such sale was used in a manner which would not have been allowable, but for such section 60(b)(5) and such Corporation realized directly or indirectly any consideration for such use.

(d) SPECIAL PURPOSE SALE.—For purposes of subsection (c), the term "special purpose sale" means a sale in which a loss was recognized, and which was made under an agreement which was entered into either (1) after October 22, 1986, and on or before April 26, 1988, or (2) after April 26, 1988, if the loss incurred thereon was used in a contract referred to in section 5021(b) of the Technical and Miscellaneous Revenue Act of 1988.

(e) NATIVE CORPORATION.—For purposes of this section, the term "Native Corporation" has the meaning given such term by section 3 of the Alaska Native Claims Settlement Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. Mr. Speaker, I rise as the sponsor of H.R. 5658.

The purpose of this bill is to clarify the original intention of the Alaska Native Claims Settlement Act that certain distributions by Alaska Native Corporations to their shareholders are not taxable.

Under the Alaska Native Claims Settlement Act, Alaskan Natives received cash, land, and rights to natural resources in exchange for the extinguishment of their aboriginal rights.

To facilitate the transfer and to assist the Natives in assimilating into the nonnative economy, the act required that the Natives form regional and village corporations to select, receive, and administer these assets.

Because the transfer of cash and property was compensatory in nature, Congress provided that the settlement be tax free.

In drafting the statute, however, Congress created an unfortunate and probably unintended ambiguity when broad and unclear language was used to govern the tax treatment of distributions of the property portion of the settlement by the Native corporations to their shareholders.

This has led to concern that such distributions would be taxable.

To tax these distributions would be giving with one hand and taking away with another.

Alaskan Natives are entitled to the entire air and just settlement intended by the Alaska Native Claims Settlement Act.

H.R. 5658 attempts to clarify this ambiguity by providing that certain distributions by Alaska Native Corporations arising of the sale proceeds of their natural resources not be taxable as dividends to the shareholders.

This tax treatment is limited to exclude any proceeds relating to the transactions in the mid-1980's to sell net operating losses to third parties. It is further limited to exclude sales of land which is so important to the Alaskan Native heritage and culture.

Mr. Speaker, I believe this bill is a good bill for the native people of Alaska and I urge my colleagues to support it.

Mr. MCGRATH. Mr. Speaker, I yield 2 minutes to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Speaker, I rise in strong support of H.R. 5658 offered by my good friend, the gentleman from Seattle, WA, Mr. MCDERMOTT. Consideration of this bill today is the culmination of an effort that Mr. MCDERMOTT and I began in 1989 to provide for the fair and just tax treatment of certain distributions by Alaska Native Corporations to their shareholders.

As you are well aware, the Alaska Native Claims Settlement Act was passed by Congress in 1971 to resolve and settle the increasing controversies arising out of claims by Alaska Natives to land and resources in Alaska. The act provided that the Natives would extinguish their aboriginal claims in exchange of cash, land, and rights to natural resources. The compensation was to be fair and just to the Alaska Natives. As a means of facilitating this large and complicated transfer, the Natives were required to form corporations to receive the transferred assets. These corporations were intended to provide the Natives with a business entity that would enable them to assimilate with the nonnative economy and, in many cases, they have worked quite effectively.

The purpose of the Settlement Act was to make the Natives whole for the claims they were relinquishing. It was not a for-profit transaction. As a result, the act provided that the settlement be excluded from Federal, State, and local tax just like a damage award from a court of law. However, because of some ambiguity in the statute, the Native Corporations have real concern that distributions to shareholders may be taxed as dividends. The distribution of the nonprofit portion of the sale proceeds, or, in essence, the return of capital portion, should not be taxed. Taxing these distributions would be nothing less than giving with one hand and taking with the other.

The amount of compensation was determined in ANCSA and the Alaska Natives should receive this fair and agreed-upon amount before the Government tries to take some of it back through taxes.

Mr. Speaker, this is a good bill. It ensures that Alaska Natives are treated fairly and justly. I urge my colleagues to support it.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. Mr. Speaker, I wish to advise Members that the gentleman from California [Mr. MILLER], the chairman of the Committee on Interior and Insular Affairs, has done a very careful analysis of this bill and supports it.

Mr. MILLER of California. Mr. Speaker, I rise in support of this legislation which clarifies the tax treatment of certain distributions to shareholders made by Alaska Native Corporations.

As chairman of the Interior Committee, I sincerely appreciate the interest that the Ways and Means Committee has taken in Alaska Native matters. The prime sponsor of this bill, Mr. MCDERMOTT of Washington, served as one of the most capable members of the Interior Committee, and he is continuing to work hard to address problems confronting American Indians through his positions on Ways and Means.

The text of the bill as reported does, however, raise some concerns about its scope and potentially unintended consequences. I am pleased that the committee has sought to respond to my concerns through clarifying report language. In addition, I appreciate the commitment of the gentleman from Washington to modify the bill language as the legislative process continues in the Senate or in conference.

I raise these concerns in the context of the experience Congress had with the sale of net-operating losses by Alaska Native Corporations. The NOL provision was approved by Congress in 1986 with a little appreciation of the fiscal and environmental consequences. While some of the Native Corporations used the tax break to offset legitimate business losses, others created resource-based NOL transactions which required quick development of their lands in order to recognize huge tax losses. For corporations which owned timber, large areas were clearcut at uneconomic rates, resulting in significant environmental degradation, all of which was subsidized by the taxpayer. The NOL provision was originally estimated to cost $50 million and eventually cost the taxpayers over $1.5 billion.

As Members know, the Interior Committee takes its responsibility for American Indian and Alaska Native matters very seriously. In 1971,

the Interior Committee wrote the Alaska Native Claims Settlement Act to resolve the aboriginal land claims of Alaska Natives.

In the act, Congress adopted a historically unique approach to American Indian policy. The Claims Act authorized the creation of 13 Native regional corporations and more than 200 village, urban, and group corporations to administer the settlement of approximately $1 billion and over 40 million acres of land.

While Congress used the corporation structure to implement the Claims Act, Alaska Native Corporations are clearly not intended to be just like other for-profit businesses. Alaska Native Corporations are charged with a difficult mission of attempting to balance economic development goals with social and cultural concerns such as maintaining their lands for subsistence use. Sale of stock has been restricted by Congress in an effort to discourage the potential short-term economic interests of current shareholders from sacrificing the long-term interests of future generations of Alaska Natives.

Section 21(c) of the Claims Act provides that the initial conveyance of lands to Alaska Native Corporations shall be tax free and that the basis in lands for tax purposes is established at the time of conveyance. Congress also intended that Native corporations could make tax-free distributions to its shareholders of the cash amounts received in the original settlement.

The bill before us today clarifies that Alaska Native Corporations may make tax-free distributions to shareholders of revenue generated from development of their natural resources in an aggregate amount of no more than the basis in the land as established by section 21(c) of the Claims Act. The tax-free treatment is limited to cash revenues received from the development of natural deposits or timber by a Native corporation or a wholly owned subsidiary prior to July 9, 1992, and excludes revenues related to net operating loss transactions.

For both fiscal and environmental reasons, it is essential that tax-free distributions be limited, as provided in this bill, to revenues generated from past resource development. After the disastrous experience with the net operating losses, it would be utterly irresponsible for Congress to open another Pandora's box of environmentally destructive activity on Native lands through additional taxpayer subsidies in the future.

It is my intent to work with the gentleman from Washington and the Ways and Means Committee to expand this legislation to provide prospective tax incentives for Native corporations which chose to preserve, rather than develop, their lands. This would build on my provision passed by the House in the comprehensive energy bill (H.R. 776) to use *Exxon Valdez* oil spill settlement funds for acquisition of Native corporation timber and lands.

I have long argued that we should use the Tax Code to encourage environmentally responsible activity. To allow tax-free distributions of revenues generated by Native corporations through selling conservation easements or lands to the Government would benefit both the Alaska Native community and the environment. I appreciate the committee's cooperation to this end.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5658.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1420

EXTENDING ROLLOVER PERIOD FOR PRINCIPAL RESIDENCE FOR CERTAIN TAXPAYERS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5652) to amend the Internal Revenue Code of 1986 to extend the period for the rollover of gain on the sale of a principal residence for the period the taxpayer has substantial frozen deposits in a financial institution.

The Clerk read as follows:

H.R. 5652

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR PURCHASE OF NEW RESIDENCE UNDER SECTION 1034.

(a) GENERAL RULE.—Section 1034 of the Internal Revenue Code of 1986 (relating to rollover of gain on sale of principal residence) is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) EXTENSION WHERE TAXPAYER HAS SUBSTANTIAL FROZEN DEPOSITS.—

"(1) IN GENERAL.—The running of any period of time specified in subsection (a) or (c) (other than the 2 years referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer has substantial frozen deposits after the date of the sale of the old residence; except that any such period of time as so suspended shall not extend beyond the date 5 years after the date of the sale of the old residence.

"(2) SUBSTANTIAL FROZEN DEPOSITS.—For purposes of this subsection—

"(A) IN GENERAL.—A taxpayer shall be treated as having substantial frozen deposits for any period during which the aggregate frozen deposits of the taxpayer exceed 50 percent of the net amount realized from the sale of the old residence.

"(B) FROZEN DEPOSIT.—The term 'frozen deposit' means deposit in a financial institution if such deposit may not be withdrawn (during a period of at least 5 days) because of—

"(i) the bankruptcy or insolvency of a financial institution, or

"(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

"(C) NET AMOUNT REALIZED.—The net amount realized from the sale of the old residence is the amount realized from the sale of the old residence reduced—

"(i) as provided in subsection (b)(1), and

"(ii) by the amount of any indebtedness of the taxpayer which was secured by the old residence.

"(3) TREATMENT OF MARRIED INDIVIDUALS.—If the old residence and the new residence are each used by the taxpayer and the spouse of the taxpayer as their principal residence, such individuals shall be treated as one taxpayer for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to—

(1) any residence sold or exchanged after December 31, 1990, and

(2) any residence sold or exchanged on or before such date if the period specified in section 1034(a) of the Internal Revenue Code of 1986 (without regard to the amendment made by subsection (a)) has not expired before January 1, 1991.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Rhode Island [Mr. REED], the sponsor of this bill.

Mr. REED. Mr. Speaker, I rise in support of H.R. 5652. I would first like to thank Chairman ROSTENKOWSKI and my good friend Mr. DONNELLY. Passage of this bill would not have been possible without their interest in the plight of Rhode Islanders still struggling to get their lives back on track in the wake of our credit union crisis.

I would also like to acknowledge and thank the Providence IRS staff for their extraordinary efforts in assisting Rhode Island taxpayers during this crisis. The efforts of Malcolm Lieberman, Patricia Rusk, Sheryl Egan, and others in the Providence IRS office were essential in resolving administratively many tax problems that arose as a result of this crisis.

On January 1, 1991, the Governor of Rhode Island closed 45 privately insured credit unions and banks when their private deposit insurance fund failed. Over 350,000 accounts and $1.7 billion in deposits was frozen. And, only in the last few weeks have the majority of those deposits been once again made available to depositors.

Mr. Speaker, never before, not even during the Great Depression, has such a large percentage of a State's population been affected by a banking crisis.

These depositors put their money into local institutions with confidence that their deposits would be fully insured and also that they would have immediate access to their deposits. They had no knowledge that would have led them to believe that their savings were at risk.

As a result, prior to January 1, 1991, several people sold their homes and de-

posited the proceeds of these sales into their privately insured institution—which was then closed, freezing the proceeds from the sale of their home. Some of these people had no access to those funds for 18 months, and they have been unable to use the proceeds to purchase a new home or obtain credit toward the purchase of a new home within the time specified in section 1034 of the IRS code.

In addition, taxpayers who now have access to their funds, or a portion of their funds, are, in some cases, faced with a capital gains penalty because they have exceeded the rollover period.

In April, I wrote to Commissioner Goldberg and asked if the IRS had the authority to waive the statutory requirements of section 1034(a). I was informed that the IRS has no such authority, and that a legislative change was necessary.

The legislation before us today, H.R. 5652, introduced by myself and Mr. DONNELLY, will assist depositors who have the proceeds from a home sale in a closed credit union. Under current IRS law (section 1034), a taxpayer may generally defer recognition of gain on the sale of a principal residence as long as the gain is rolled over into a new residence within a 2-year period.

H.R. 5652 suspends the 2-year rollover period, but for not more than 5 years, during any time that a taxpayer had substantial frozen deposits.

A taxpayer would be treated as having substantial frozen deposits if an amount exceeding 50 percent of the amount realized from the sale of a principal residence were deposited and then frozen in a financial institution. The deposits would be deemed frozen if the funds may not be withdrawn because of the bankruptcy or insolvency of the financial institution, or any requirement imposed by the State in which the institution is located because of the bankruptcy or insolvency.

This legislation received the support of Assistant Secretary of the Treasury for Tax Policy during a hearing in the Ways and Means Committee on July 6.

This legislation applies to a very small number of people under extremely specific circumstances. It will result in no significant loss to the U.S. Treasury.

Mr. Speaker, this legislation is simply fair. We are not giving these individuals anything to which they are not entitled. We are simply recognizing that during the time when the accounts were frozen, these people could not possibly rollover the funds because they could not get the money out of the bank.

Last year I came before my colleagues many times and asked your help in approving a loan guarantee for the State. Thanks in large measure to the tremendous support we received from Banking Committee Chairman HENRY GONZALEZ and other members of that Committee, Congress supported this request. Today we are taking another step toward resolving this situation and I am back before you again, asking for your understanding once more.

I urge my colleagues to support this measure which will allow a small number of Rhode Island taxpayers to finally get on with their lives.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Ways and Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5652.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SPECIAL ESTATE TAX VALUATION RECAPTURE RULES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5647) to provide that the special estate tax valuation recapture provisions shall cease to apply after 1992 in the case of property acquired from decedents dying before January 1, 1982.

The Clerk read as follows:

H.R. 5647

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective on and after January 1, 1993, the amendments made by subsection (c) of section 421 of the Economic Recovery Tax Act of 1981 shall also apply with respect to the estates of decedents dying before January 1, 1982.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Speaker, I rise in strong support of H.R. 5647 and urge its favorable adoption by the House and its eventual adoption into law. I introduced H.R. 5647 in order to remove an inequity in current law and to help preserve family farms and family businesses in America.

This bill deals with section 2032A of the Internal Revenue Code. This highly complex section, which we amended in OBRA 1990 due to its unintended adverse impact on family-owned businesses, deals with the special use valuation of estates for estate tax purposes. Section 2032A permits the heirs of an estate to have any land or business property in the estate to be valued at its use value—be it agricultural or small-business—instead of its market value in order to reduce the estate taxes that are due. The purpose behind this special use valuation is to help preserve family farms and family businesses that may have to be sold just to pay the estate taxes if the taxes were computed based on the market value for development.

Election of special use valuation treatment under section 2032A is not free, however. If elected, the heirs have to enter into a restrictive agreement with the Internal Revenue Service [IRS] which requires them to keep the land in its special use—be it farming or small business—for a period of years and to not sell it during that period. The IRS also maintains a lien on the property equivalent to the reduced tax liability which resulted from the special use valuation. If the heirs discontinue the qualified use or sell the property, they are liable for the previously avoided estate tax.

Prior to 1982, the time period of the restrictive section 2032A agreements was 15 years. However, in 1981, pursuant to the Economic Recovery Tax Act of 1981 (Public Law 97-34), these restrictive agreements were only required to last 10 years. The existing 15-year agreements, however, were not altered thus leaving the inequity I spoke of earlier. The effect of H.R. 5647 is to remedy this inequity by converting all of the remaining 15-year agreements into 10 year agreements. Since 1992 is the 10th year after the tax change in 1981, all 15-year agreements would be terminated as of December 31 of this year and the IRS liens on those estates would be lifted.

The motivation for H.R. 5647 is not to encourage heirs to sell agricultural land or other business assets or use them for nonqualified purposes. Nor is it because constituents have been pounding my door down asking to get out of the agreements. I think the IRS would agree that most of the people holding properties under section 2032A do not plan on selling it or not keeping it in farming or other family business use.

In fact, how this issue came to my attention was from a constituent who farms land subject to a section 2032A agreement and who desperately wants to continue doing so. However, due to the restrictive lien placed on the property and a few tight years in farming,

he and his family members are finding it increasingly difficult to secure adequate financing to continue farming—the IRS lien restricts how much the bank can lend. If they cannot secure adequate financing they will be forced to sell the family farm, violate the agreement which they don't want to, and then potentially be subject to additional estate taxes.

The purpose of my bill is to remove this obstacle and help preserve the family farm. It has become clear to me that repeal of section 2032A to these old agreements is the most effective, direct way of removing that obstacle and it is also fair given the change made in 1981.

I urge my colleagues to pass this bill and I look forward to its adoption into law.

□ 1430

Mr. MCGRATH. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5647.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TAX TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5657) to amend the Internal Revenue Code of 1986 with respect to the treatment of deposits under certain perpetual insurance policies.

The Clerk read as follows:

H.R. 5657

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES.

(a) GENERAL RULE.—Section 7872 of the Internal Revenue Code of 1986 (relating to treatment of loans with below-market interest rates) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES.—

"(1) IN GENERAL.—This section shall not apply to any deposit made by a policyholder under a qualified perpetual policy.

"(2) QUALIFIED PERPETUAL POLICY.—For purposes of paragraph (1), the term 'qualified perpetual policy' means any insurance policy—

"(A) which provides insurance for property damage or casualty with respect to qualified residential property (or the contents thereof), and

"(B) which is funded only by the policyholder placing with the insurance company a cash deposit (and does not provide for any periodic premiums) and such deposit is fully refundable (except for a penalty for early withdrawal) upon cancellation of the policy.

For purposes of the preceding sentence, the term 'qualified residential property' means any personal residence and any building used for residential purposes with 10 or fewer dwelling units."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 7872(c) of such Code is amended by striking "subsection (g)" and inserting "subsections (g) and (h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN], the sponsor of the bill.

Mr. CARDIN. Mr. Speaker, I rise in support of H.R. 5657.

Mr. Speaker, H.R. 5657, which I introduced along with my colleagues on the Ways and Means Committee, Mr. GRADISON and Mr. SCHULZE, brings tax fairness to thousands of middle-class American homeowners. It does so by reaffirming the traditional tax treatment of perpetual insurance policies.

H.R. 5657 clarifies the tax treatment of deposits under perpetual insurance policies on residential property. The bill is crucial to maintaining practices under which thousands of homeowners have insured their homes for 200 years.

The way the policies work is that the homeowner makes a deposit with the insurer. The amount of the deposit is based on the value of the property being insured. The company invests the deposit, and uses the earnings on the investment to cover the cost of the insurance.

As I mentioned, the companies offering these perpetual insurance policies have been in business, operating in this way, for 200 years. The transaction between homeowners and the companies involved have never triggered a Federal tax consequence.

In the past few years, the Internal Revenue Service has made a number of inquiries of the companies. The Service has sought to determine whether the deposit paid by the homeowner constitutes a loan at below market rates under section 7872 of the Internal Revenue Code.

Section 7872, which was adopted as part of the 1984 Tax Act, provides that for certain below-market rate loans, the foregone interest is treated as transferred from the lender to the borrower and retransferred by the borrower to the lender as interest. The section applies to gift loans, demand loans, compensation-related loans, and tax avoidance loans.

The deposits made by policyholders under perpetual insurance policies fit none of these categories. It is especially clear that the deposits do not constitute tax avoidance. The policies in question have been offered, in the case of the company operating in Baltimore, since 1865. It is hard to argue that a transaction that predates the existence of the Federal income tax by more than half a century was designed as a tax avoidance scheme.

Section 7872 specially applies to interest arrangements that have a significant effect on the Federal tax liability of the lender or the borrower. It is important to understand that the only Federal tax impact from a change in the traditional treatment of these policies would fall not on the companies, but on thousands of middle-class homeowners. If perpetual deposits are treated as interest-free loans, the company, as borrower, has deemed premium income as an offsetting interest expense deduction.

But while the change would be a wash for the company in terms of taxes, the policyholders would be required to pay tax on interest income, and have no offsetting deduction. Given the average size of the deposits of approximately $3,000, the significant-effect provision of section 7872 should not be triggered.

Furthermore, the regulations adopted under the significant-effect provision include a list of exemptions. The exemptions include accounts or deposits made with a bank in the ordinary course of its business, and loans made by a life insurance company in the ordinary course of its business. The close similarity of the perpetual insurance deposits to these exempted transactions clearly leads to the result we would effect through H.R. 5657.

Mr. Speaker, only a small number of these companies are operating in the country today. The policyholders are not high-rollers seeking advantages through the manipulation of the Tax Code. In fact, the average policyholder of the Baltimore-based perpetual company has income of slightly over $50,000.

The bill simply codifies the tax treatment that has traditionally been accorded these policies. The revenue effect of the bill is negligible, estimated by the Joint Tax Committee at $1 million a year. To treat these policies as loans under section 7872 clearly reaches beyond the intent of the section, which was to nail tax avoidance schemes.

Mr. Speaker, we should not be in the business, through the misapplication of the Tax Code, of putting companies out

of business. The American taxpayers who have bought these policies deserve to be able to have the assurance that the Federal Government will not cavalierly and unwisely disrupt their homeowners insurance.

I urge my colleagues to join me in passing this needed legislation.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, I rise in support of H.R. 5657. The bill has been more than adequately explained by our colleague, the gentleman from Maryland [Mr. CARDIN]. It was not deemed to be a controversial measure when it was considered by the Committee on Ways and Means, and we have heard no objections since then.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5657.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

MFN STATUS FOR REPUBLIC OF ALBANIA

Mr. GIBBONS. Mr. Speaker, I move to suspend the rule and pass the joint resolution (H.J. Res. 507) to approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania.

The Clerk read as follows:

H.J. RES. 507

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania transmitted by the President to the Congress on June 16, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a change of pace. All the bills we have had so far have been tax bills. This is a trade bill. This bill extends most-favored-nation treatment to the Republic of Albania.

Mr. Speaker, for over 50 years the Republic of Albania, the people of Albania, have either been occupied by hostile forces or they have been under a Communist dictatorship. Along with the revolution that has taken place in Eastern Europe, the people of the Republic of Albania have at last found freedom. They deserve freedom. I know of no people in Europe who have been more mistreated by their neighbors, by history, by religion, or by occupying invaders than the people of Albania.

Mr. Speaker, after World War II the country sunk into the most obstinate of all Communist tyrannies. Albania, under the Communist dictator, became the ultimate Communist state.

□ 1440

It was more Communist than the U.S.S.R. It was more Communist than China, and with the same disastrous or more disastrous results accrued to these fine people.

They now seek freedom. They have established a republic. They are attempting to gain or regain control of their destiny and enter into the world marketplace, and we welcome them. They are entitled to it.

They have entered into a treaty of commerce and trade with the United States that extends to the United States an opportunity to enter their markets on a commercial basis and to receive fair and free treatment of our goods and our services and to acknowledge that we are entitled to trade in their country. By this act, if it is passed by the Congress, and I think it should be, the President of the United States will be entitled to extend to these people nondiscriminatory tariff treatment to their products.

I urge the adoption of this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I rise in strong support of House Joint Resolution 507.

Mr. Speaker, I yield 3 minutes to my colleague from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in support of this resolution approving the extension of most-favored-nation [MFN] treatment to the products of the Republic of Albania. I want to commend the good work of majority leader GEPHARDT and minority leader MICHEL and the gentleman from Florida [Mr. GIBBONS], the distinguished chairman of the trade subcommittee for their leadership in bringing this bill to the floor at the request of the administration.

Not many years ago, Albania was one of the most closed societies in the world of nations and was extremely anti-American in its orientation. Totalitarian communism denied basic freedoms to the Albanian people and imposed upon that poor country an unworkable economic system that made Albania the most undeveloped nation in Europe.

Fortunately, the winds of change blew through Eastern Europe in 1989, and dramatic changes have taken place in Albania since that time. Already, democratically elected President Sali Berisha is bringing basic human freedoms, respect for human rights and free market economics to his longsuffering nation.

The administration and the Congress, in particular, encouraged the democratic forces in Albania to stand up to their former Communist regime. We gave them good moral support at that time. However, we cannot stand back and let that poor nation face overwhelming challenges without another helping hand. We must stay engaged.

House Joint Resolution 507 will give Albania the kind of help that it needs as it moves from a command to a free market economic system. The resolution will grant Albania standard tariff rates on exports to the United States. Already, America is granting economic assistance and humanitarian relief to that small country. This resolution provides badly needed help in the trade area so that Albania can strengthen its weak economy, and someday join the family of free market nations.

Accordingly, I urge my colleagues to join me in strongly supporting this timely resolution.

Mr. MCGRATH. Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this Member rises in strong support of House Joint Resolution 507, granting most-favored-nation tariff status to the Republic of Albania.

For decades Albania has been the most isolated nation in Europe, cut off from almost all contact with its neighbors. Cut off from the outside world, this tiny nation on the Adriatic has been the country that time forgot. And it has languished, as its leaders imposed a brand of radical Marxism that was extreme even in the eyes of their Communist neighbors. Indeed, of all the former Communist countries of Eastern Europe, perhaps Albania's sufferings were most extreme.

Yet the democratic revolution has now come to Albania. The recently conducted elections were a dramatic demonstration of the strides being taken in Albania. This is a country that wants democracy. This is a country that wants a free market economy. This is a country that seeks to rejoin the modern family of nations.

Mr. Speaker, this Member would note the important role in Albania's transition to a free market democracy that is being played by a consortium headed by the University of Nebraska at Lincoln. Faculty staff of UN–L are on the scene for aid in Albania, working with local leaders to develop the technical and legal infrastructure to sustain a free market economy. UN–L is providing technical assistance at the time when Albania needs it most. And,

through the University's Center for Albanian Studies—the only such center in the world—books, computers, and software are being provided to the University of Tirana to establish a management development center. This modest but very necessary educational assistance effort, coupled with the granting of most-favored-nation tariff status, will help Albania in its economic transformation. In going forward with these measures, we will be laying the foundation for good trade relations in the years ahead.

Mr. Speaker, I commend the leadership on both sides of the aisle, and Chairman GIBBONS, and I thank the gentleman for his special role in this, as well as the ranking minority member of the Subcommittee on Trade.

This Member would urge adoption of House Joint Resolution 507.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution has certainly been adequately explained by the several speakers. It was certainly not deemed to be controversial when it was considered in the Ways and Means Committee and we have heard no objections to the resolution since then.

Mr. SWETT. Mr. Speaker, I enthusiastically and wholeheartedly support and welcome this legislation before the House today which will extend most-favored-nation [MFN] status to products of Albania coming to the United States.

This legislation is most appropriate in view of the political changes that have taken place in Albania over the past 2 years. The people of Albania have risen up against their former Communist government—one of the most repressive and oppressive Communist governments—and Albania now has a freely elected, democratic government. Just a few years ago, I had the great pleasure and honor of welcoming to Washington, Albania's democratically elected President, Hon. Sali Barisha. His commitment, and the commitment of the Albanian people, to democracy and to a free-market economy are most impressive, and they make it most proper that we extend this trade benefit to Albania at the present time.

Mr. Speaker, Albania is a small, poor European country which is seriously in need of economic development in order to provide for its population. The people of Albania have been subject to a brutal dictatorship which stifled the economy of the country, contributed to the country's impoverishment, and spent limited resources for questionable purposes. It is most gratifying to see the new Albanian Government making decisions that will reorient the country's economy and benefit the Albanian people.

It is most appropriate under these circumstances, Mr. Speaker, that we extend the same benefits to Albania that are enjoyed by other countries, including the other newly emerging democracies of central and Eastern Europe. Albanian trade products are limited and are likely to be limited in the future, but this has great symbolic importance. By extending MFN trade status to Albania, we are welcoming and recognizing Albania's return to equal status among the community of nations.

It is noteworthy, Mr. Speaker, that New Hampshire has played a disproportionate role in helping this newly emerging democracy in making the political and economic changes that are vital to its further development. Among those from New Hampshire who have contributed are Mr. Tom Christo, a prominent businessman; David Young, a businessman and member of our State house of representatives; and our colleague, BILL ZELIFF, who personally traveled to Albania earlier.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. HOYER. Mr. Speaker, I rise today to voice support for the pending United States-Albania trade agreement. Timely adoption of the agreement would pave the way for the extension of most-favored-nation [MFN] status to that nation. I commend the distinguished chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, and the chairman of the Trade Subcommittee, Mr. GIBBONS, for their prompt action on this important agreement. The agreement, signed during President Berisha's historic visit to Washington in June, is a milestone in United States-Albanian relations and could provide an important boost to Albania's faltering economy.

As Chairman of the Helsinki Commission, I have followed closely developments in Albania. A nation slightly smaller than my home state of Maryland, Albania has made significant strides in recent years to reverse decades of self-imposed international isolation and domestic repression. Diplomatic relations with the United States were restored in 1991 and Albania became a full participant in the Conference on Security and Cooperation in Europe [CSCE].

Albania is committed to undertaking political and economic reforms in keeping with its CSCE commitments which set forth excellent standards for the transition to democracy and market economy. Albanians gave their overwhelming support to the opposition Democratic Party in elections held earlier this year which were observed by Helsinki Commission staff. Dr. Sali Berisha, a leading Albanian intellectual and a founder of the Democratic Party—Albania's first opposition party—was elected President last March following elections in which the Democratic Party won 62 percent of the vote. President Berisha met with the Commission leadership during his recent official visit to Washington. He had testified before the Commission on democratic developments in his country in May 1991.

President Berisha and the leadership in Tirana face the difficult task of overcoming the legacy of communism which has left Albania as the poorest country in Europe today. Soaring unemployment, reportedly as high as 70 percent, and inflation are sources of particular concern. Nevertheless, the democratic government is dedicated to implementing market-oriented reforms. Its action program presented in April calls for radical reform covering privatization, development of the private sector, and liberalization of prices and trade. The Government is working closely with the International Monetary Fund and other organizations in efforts to overcome decades of centralization and forced collectivization.

I urge my colleagues to vote in support of the pending trade agreement as a means of demonstrating our commitment to the reform process underway in Albania and as a vehicle for expanding trade opportunities between our two nations.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise in support of House Joint Resolution 507, to approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania.

Approval of this resolution will permit the President to proclaim most-favored-nation [MFN] treatment to Albania and for the agreement on trade relations between the United States of America and the Republic of Albania, signed on May 14, to enter into force upon an exchange of notes of acceptance by the two governments.

Albania has met the terms and conditions set forth in title IV of the Trade Act of 1974 for the granting of MFN treatment. The bilateral trade agreement includes provisions for facilitating trade and business relations between our two countries, strong protections of intellectual property rights, import safeguard measures, commercial dispute settlement, as well as reciprocal nondiscriminatory treatment. The President also has waived the so-called Jackson-Vanik Freedom of Emigration Requirements of title IV based on satisfactory assurances from the Albania Government that its practices will lead substantially to freedom of emigration objectives.

Mr. Speaker, the Committee on Ways and Means is not aware of any opposition to this resolution. Extending MFN status to Albania will promote United States trade and investment opportunities and demonstrate United States support for the progress by Albania from economic isolation into the global marketplace.

I urge all my colleagues to support passage of House Joint Resolution 507.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the joint resolution, House Joint Resolution 507.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the 19 bills that have just been considered and passed by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION ACT OF 1992

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5399) to amend the U.S. Commission on Civil Rights Act of 1983 to provide an authorization of appropriations.

The Clerk read as follows:

H.R. 5399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Authorization Act of 1992".

SEC. 2. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended by adding at the end the following: "There are authorized to be appropriated to carry out this Act $7,422,014 for fiscal year 1993, and an additional $850,000 for fiscal year 1993 to relocate the headquarters office. None of the sums authorized to be appropriated for fiscal year 1993 may be used to create additional regional offices.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. EDWARDS] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. HYDE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5399 authorizes an appropriation for the U.S. Commission on Civil Rights for fiscal year 1993.

By voice vote, the Committee on the Judiciary rejected the Commission's request for increased funding of 31 percent and staff of nearly 21 percent over the current fiscal year.

H.R. 5399 maintains the agency at 1992 levels with the requested 4.7 percent COLA increase and 4 percent for inflation. It also authorizes $850,000 to relocate the headquarters office, and prohibits using any funds to create additional regional offices.

Last year we debated legislation extending the life of the Commission. The clear bipartisan message from that debate was that the agency must clearly demonstrate it is back in the fact-finding business if it expects to be reauthorized at the end of 3 years. I believe the committee's action this year makes clear that it is premature to expand its operations until that record of fact-finding is clearly demonstrated.

I am pleased the Commission is taking seriously the committee's concerns about its fact-finding mandate. Already this year, it has:

Released a well publicized report on the "Civil Rights Issues Facing Asian Americans in the 1990's";

Conducted hearings in Washington, DC and Chicago, IL, around its new theme of race, poverty, and violence; and

It plans to issue three additional reports.

In fiscal year 1993, the agency plans to issue three reports and conduct a hearing in Los Angeles on racial and ethnic tensions.

Mr. Speaker, the sums authorized by H.R. 5399 will enable the Commission to carry out its statutory fact-finding mission. I urge support of this bill.

□ 1450

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill authorizes an appropriation of $7,422,014 and an additional $850,000 for fiscal year 1993 to relocate the headquarters office of the Commission. The building in which the Commission is currently located is considered unsafe and so they will be forced to move to another location in Washington.

This authorization is less than what the administration requested and the Commission originally requested, but the subcommittee members, on a bipartisan basis, feel that it is sufficient for the Commission to operate effectively.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. EDWARDS] that the House suspend the rules and pass the bill, H.R. 5399.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ESTABLISHING DIVISIONS IN THE GENERAL JUDICIAL DISTRICT OF CALIFORNIA

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3795) to amend title 28, United States Code, to establish three divisions in the Central Judicial District of California.

The Clerk read as follows:

H.R. 3795

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress makes the following findings:

(1) The Federal Government has the responsibility to provide quality services which are readily accessible to the people it serves.

(2) The court facilities in the Central Judicial District of California are presently inadequate, and current and projected growth exacerbates the problem.

(3) The population demographics of southern California have changed dramatically over the last decade, as the center of population shifts inland. Between 1980 and 1990, the population of Riverside County increased 76.5 percent, and San Bernardino County's population increased 58.5 percent, to a combined population of 2,600,000.

(4) In the next 15 years, the population in Riverside and San Bernardino Counties is expected to increase again by 70 percent, and 67 percent, respectively. By the year 2005, Riverside and San Bernardino Counties will have 4,400,000 residents.

(5) As a result of the population growth, the freeways connecting the Pacific coast and the inland areas are tremendously overburdened, and Federal offices along the coast are no longer accessible to the residents of Riverside and San Bernardino Counties.

(6) The creation of 3 divisions in the Central Judicial District of California is urgently needed to provide for the delivery of judicial services to all areas and all residents of the Central Judicial District of California.

SEC. 2. CREATION OF 3 DIVISIONS IN CENTRAL DISTRICT OF CALIFORNIA.

Section 84(a) of title 28, United States Code, is amended to read as follows:

"(c) The Central District comprises 3 divisions.

"(1) The Eastern Division comprises the counties of Riverside and San Bernardino.

"Court for the Eastern Division shall be held at a suitable site in the city of Riverside, the city of San Bernardino, or not more than 5 miles from the boundary of either such city.

"(2) The Western Division comprises the counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

"Court for the Western Division shall be held at Los Angeles.

"(3) The Southern Division comprises Orange County.

"Court for the Southern Division shall be held at Santa Ana.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act.

(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the Central District of California on such date.

(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Central Judicial District of California on the effective date of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. President, I will take a few minutes to briefly describe the bill and its background.

H.R. 2795 would merely establish a third place for holding court at a site

in San Bernardino or Riverside Counties in the Central Judicial District of California. At the present time, court is only held in Los Angeles and Santa Ana in Orange County.

The justification for this minor change in the central district can be made on the following demographic and geographic factors. Between 1980 and 1990, the population of Riverside County increased 76.5 percent and the population of San Bernardino County increased 58.5 percent; 2.6 million persons now live in these counties which is the 11th most populous area in the country. In the next 15 years, the population in these areas is projected to increase again by 70 percent and 67 percent, respectively, which will mean by the year 2005 they will have 4.4 million residents.

San Bernardino County, itself, is the largest county in the 48 contiguous States of the United States—it is larger than the combined areas of New Jersey, Massachusetts, Delaware, and Rhode Island. Together with Riverside County it is an enormous expanse. This combined with the results of other population growth in southern California has made the freeways between these inland areas and the court houses in Santa Ana and Los Angeles tremendously overcrowded, leading to rush-hour traffic commutes of 5 hours a day or more for law enforcement officers, attorneys, and other principal parties involved with Federal civil and Criminal cases.

On May 4, 1992, the judges of the central judicial district overwhelmingly voted in favor of H.R. 3795 and Chief Judge Real stated at our sharing on June 11, 1992, that H.R. 3795 has been approved by the judicial council for the ninth circuit. Chief Judge Real also indicated that he expects support for H.R. 3795 from the Judicial Conference of the United States when they meet in August.

H.R. 3795 has the bipartisan support of both Senators from California and is sponsored in the House by Mr. GEORGE BROWN and the original cosponsors are Mr. LEWIS, Mr. COX, and Mr. MCCANDLESS of California.

I believe H.R. 3795 is noncontroversial and it was reported out favorably by voice vote from the Committee on the Judiciary. I urge your support for H.R. 3795.

Mr. Speaker, I want to, first of all, congratulate the ranking Republican, the gentleman from California [Mr. MOORHEAD], for his work on this and other legislation. He cannot be with us today, but substituting for him today is the gentleman from North Carolina [Mr. COBLE]. I appreciate his valued service on our subcommittee.

Mr. Speaker, I urge support for H.R. 3795.

Mr. Speaker, I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3795, which would amend title 28, United States Code, to establish three divisions in the Central District of California.

Mr. Speaker, I would like to commend the chairman of the Subcommittee on Intellectual Property and Judicial Administration, the gentleman from New Jersey [Mr. HUGHES], as well as the ranking minority member of the subcommittee, the distinguished gentleman from California [Mr. MOORHEAD], for their work on this legislation. In addition, several distinguished members of the California delegation have played important roles in the consideration of H.R. 3795 and are to be commended for their efforts. They include the gentleman from California [Mr. BROWN], the gentleman from California [Mr. LEWIS], the gentleman from California [Mr. COX], and the gentleman from California [Mr. MCCANDLESS].

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LEWIS], one of the original cosponsors of the legislation, and one who has been instrumental in getting this bill to the floor of the House today.

Mr. LEWIS of California. Mr. Speaker, I rise in support of H.R. 3795, a bill to establish three divisions of the Central Judicial District of California.

This legislation will create three separate divisions of the central district. One division will continue to meet in Los Angeles; the second will meet in Orange County; and the third will meet in the inland empire—ideally in San Bernardino County.

Having represented the majority of San Bernardino County, I have seen the enormous population growth over the past decade. In fact, over the last 10 years, the population of San Bernardino County has nearly doubled in size. With population growth expected to continue its upward spiral into the next century, the ability of San Bernardino County residents to commute to Federal Court facilities in Los Angeles and Orange County becomes increasingly difficult, if not impossible. The transportation infrastructure simply has not kept pace with these demographic changes. Long commutes have become increasingly common.

Moreover, the pressures placed by population growth are magnified when one considers the enormity of San Bernardino County. San Bernardino County is the largest county in the continental United States. Many of my constituents reside in remote areas some 200 miles away from the central district's facilities. From Needles to Barstow to Baker and beyond, my constituents are denied reasonable access to Federal Court facilities. As jurors, they are expected to travel unreasonable distances to participate in trials. Locating a court in the San Bernardino or Riverside region would erase this geographic barrier to justice.

Accompanying the population growth in San Bernardino has been a disturbing increase in criminal activity. Both San Bernardino and Riverside Counties have been named high intensity drug trafficking areas [HIDTA] by the Department of Justice. This designation was made due to the large drug trade that exists in the southern California area. As a result of this action, a number of new antidrug initiatives have begun and additional funds have been made available to local law enforcement in San Bernardino and Riverside Counties. A new court in this area would aid in the quick and efficient disposition of cases brought about through this HIDTA designation.

The district court's docket has reflected the area's growth. According to the Administrative Office of the United States Courts, criminal activity and civil filings increased from 9,876 in 1990 to 10,601 in 1991. Down from a high of 14,298 in 1987, filings will undoubtedly increase significantly over the next decade. The median time of criminal felony cases from filing to disposition has increased from 3.5 months in 1986 to 5.1 months in 1991. Though we recognize and commend the court's efforts to accommodate this growth, I believe the only realistic permanent solution would be to divide the district and place a Federal court in the Inland Empire—specifically in San Bernardino County.

I am pleased to have worked with my colleagues, Mr. BROWN, Mr. MCCANDLESS, and Mr. COX, in designing this bill and I hope we can move to enact it and return make the courts more convenient to the people of southern California. I urge my colleagues to support H.R. 3795.

□ 1500

Mr. HUGHES. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California [Mr. BROWN], who is the original sponsor of this legislation and has worked very diligently to move this legislation to the floor.

Mr. BROWN. Mr. Speaker, I will not repeat the arguments already made by my good friend, the gentleman from New Jersey [Mr. HUGHES] with regard to this legislation.

Mr. Speaker, first let me thank the distinguished chairman of the House Judiciary Committee, Congressman JACK BROOKS, and the very able chairman of the Judiciary Subcommittee on Intellectual Property and Judicial Administration, Congressman BILL HUGHES, for bringing this important bill (H.R. 3795) before the House for a vote. My constituents and I could not hope for more concern and responsiveness from any Member of the Congress.

In the interest of time, let me briefly highlight some of the most compelling

arguments in support of bringing Federal Court to the region of southern California that we affectionately call the inland empire.

First, as you know, the population of southern California continues to soar. But what you may not know is that the center of this population explosion is shifting steadily away from the coastal counties toward the Inland Empire. The two counties I represent had the fastest growing population anywhere in the Nation during the past decade.

Between 1980 and 1990, the population of Riverside County rose 76.5 percent, while the population of San Bernardino County increased 50.5 percent; 2.6 million people now live in the Inland Empire, yet there is absolutely no Federal Court within reasonable access. In comparison, 2.1 million people live in Orange County and Federal Court already sits in Santa Ana. In Sacramento, 1.8 million people enjoy a Federal Court in their midst.

Second, foreboding demographic trends are clear. The population of the Inland Empire will continue to grow by leaps and bounds. In the next 15 years, the population in Riverside and San Bernardino Counties is projected to grow by 70 percent and 67 percent, respectively. By the year 2005, Riverside and San Bernardino Counties will have 4.4 million residents.

Third, geographic practicalities also argue in favor of establishing a division of Federal Court in the Inland Empire. San Bernardino County is the largest county in the 48 contiguous States—larger than the combined States of New Jersey, Massachusetts, Delaware, and Rhode Island. Combined with Riverside County, there is an enormous expanse of far-flung communities in the Inland Empire, but there is no access to Federal Court facilities closer than downtown Los Angeles—more than 200 miles from the eastern border of San Bernardino County. Those long distances, for example, make it extremely difficult for my constituents to serve as jurors.

Fourth, residents of the Inland Empire are confronted daily with commuting gridlock when they attempt to travel to Federal Court. As a result of unparalleled population growth in southern California, in general, and in the Inland Empire, in particular, the highways connecting Los Angeles and Orange County are completely overwhelmed. Federal Court facilities in Los Angeles and Santa Ana are very inaccessible to my constituents. It is very wasteful and totally unreasonable to expect the residents of San Bernardino and Riverside Counties to endure a commuting nightmare, sitting in traffic 6 hours round-trip to travel just 50 miles to pursue one case in a Federal courtroom in Los Angeles or Santa Ana.

Finally, H.R. 3795 represents a cost-effective way to redress these existing problems and to position the Federal judiciary in southern California smartly to respond to the additional looming demographic changes certain to further transform our region. Subdividing the central district is far less costly than creating a whole new district. Also when the lease for Federal bankruptcy judges in San Bernardino expires in 1994, their offices could be consolidated in one Federal courthouse site in the Inland Empire.

Mr. Speaker, it is my firm conviction that our Federal Government has a solemn, threshold responsibility to provide quality services that are readily accessible to the people we serve. With respect to Federal Court facilities, that is clearly not happening in the Inland Empire.

Finally, I would be remiss if I did not recognize three outstanding southern Californians who have provided so much assistance to me in advancing this legislation. The extraordinary leadership and foresight shown by Chief Judge Manuel Real of the Central Judicial District of California has been crucial in building support for this bill and underscoring why it is so urgently needed. He is truly one of our Nation's exceptional jurists and public servants.

Jane Carney and Terry Bridges, two outstanding attorneys in the Inland Empire, past and present leaders of our local bar associations, have worked tirelessly, too, to demonstrate why our region merits its own Federal Court.

H.R. 3795 has received strong bipartisan backing at every step of the legislative process. I urge my colleagues to support it.

Mr. McCANDLESS. Mr. Speaker, today I rise in support of H.R. 3795, a bill to establish three divisions of the Central Judicial District of California.

This bill will create three separate divisions of the central district. One division will continue to meet in Los Angeles; the second will meet in Santa Ana in Orange County; and the third will meet either in San Bernardino or Riverside. Let me say just a word about the special problems faced by these two counties.

Over the last 10 years, the population in Riverside and San Bernardino Counties has nearly doubled in size. In the next 15 years, it's predicted that it will double once again. This increase has clogged both the courts with more cases and the freeways with more cars.

In addition, both San Bernardino and Riverside counties have been named part of the high-intensity drug trafficking area [HIDTA] by the Department of Justice. This designation was made due to the large drug trade in the southern California area. As a result of this action, a number of new antidrug initiatives have begun and additional funds have been made available to local law enforcement. A new court in this area would aid in the quick and efficient disposition of cases brought about through this HIDTA designation.

I am pleased to have worked with my colleague in designing this bill and I hope we can move to enact it and return the courts to the people of southern California. I urge my colleagues to vote in favor of H.R. 3795.

Mr. MOORHEAD. Mr. Speaker, I would like to indicate my support for H.R. 3795, which would establish three divisions in the Central Judicial District of California and also establish a new place for holding court in San Bernardino or Riverside County. I would like to commend the chairman of the Subcommittee on Intellectual Property and Judicial Administration, BILL HUGHES, for his work on this legislation. In addition, several of my distinguished colleagues from California, especially GEORGE BROWN, JERRY LEWIS, CHRIS COX, and AL McCANDLESS have played key roles in the consideration of H.R. 3795 and are to be commended for their efforts.

As one of the witnesses at the Subcommittee hearing on this proposal noted:

There have been discussions and proposals over many years about solutions to the perceived problems of the geographical size, caseload, and population of the current Central District of California.

In fact, as far back as 1977, our former distinguished colleague on the Judiciary Committee and now a prominent judge on the Ninth Circuit Court of Appeals, Chuck Wiggins, introduced H.R. 3972, a bill to create a new judicial district in California comprised of the counties of Orange, San Bernardino, and Riverside. By the same token, our distinguished colleague from California, BILL DANNEMEYER, has introduced legislation in each of the last two Congresses to create a new judicial district in California. While H.R. 3795 does not go as far as creating a new judicial district, it does represent in part the culmination of these earlier, laudable efforts to bring relief to the Central District of California.

In short, the need for H.R. 3795 is based on the current burgeoning population of 2.6 million people in San Bernardino and Riverside counties. In the next 15 years, the populations in these areas are projected to increase again by 70 percent and 67 percent respectively, which will mean by the year 2005 they will have 4.4 million residents. In addition, Federal Court facilities in Los Angeles and Santa Ana are very inaccessible to litigants, witnesses, jurors, and counsel. Six-hour round trip commutes to travel 50 miles to pursue one case in a Federal courtroom in Los Angeles or Santa Ana are not uncommon for residents of San Bernardino and Riverside Counties.

H.R. 3795 is supported by the judges of the Central District of California, the Riverside and San Bernardino County Bar Associations and all major Federal law enforcement agencies in the relevant counties. Accordingly, I urge my colleagues' support for the legislation.

Mr. COBLE. Mr. Speaker, I yield back the balance of my time.

Mr. HUGHES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 3795.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

PROVIDING POLICIES WITH RESPECT TO APPROVAL OF BILLS PROVIDING FOR PATENT TERM EXTENSIONS

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5475) providing policies with respect to approval of bills providing for patent term extensions, and to extend certain patents, as amended.

The Clerk read as follows:

H.R. 5475

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STATUTORY EXTENSION OF PATENT TERMS.

(a) IN GENERAL.—The Congress finds that, in the future, any bill providing for the extension of the term of a patent should not be approved by the Congress unless the requirements set forth in subsection (b) or (c) are met.

(b) REQUESTS BASED ON DELAY IN PREMARKET APPROVAL.—When the basis for a bill providing for a patent extension is delay in premarket regulatory approval of a patented invention, the following requirements should be met before the bill is approved by the Congress:

(1) GOVERNMENTAL MISCONDUCT.—(A) Delay in the approval process must have been beyond the control of the patent holder and directly caused by governmental misconduct.

(B) For purposes of this paragraph, governmental misconduct is established by presentation of adequate proof of—

(i) dishonest or deceitful conduct,

(ii) vindictive or retaliatory action,

(iii) arbitrary, capricious, or grossly negligent performance of governmental duties, or

(iv) serious failure to perform governmental duties,

by the Federal Government.

(C) Unusual or unexpected delay alone does not constitute governmental misconduct for purposes of this paragraph.

(2) UNJUSTIFIED INJURY TO THE PATENT HOLDER.—The governmental misconduct under paragraph (1) must have caused a substantial inequity to the patent holder who, without the extension of the patent term, will suffer material harm directly attributable to the delay in the approval process. The unjustified harm to the patent holder if relief is not granted must outweigh any harm to the public (such as through higher prices) or to competitors that will result from extension of the patent.

(3) EXPIRED PATENTS.—Expired patents shall not be revived and extended, except under the most extraordinary and compelling circumstances. In no such case shall an extension be granted unless the patent holder exercised due diligence to prevent the invention from entering the public domain.

(4) INTERVENING RIGHTS.—In the event extraordinary circumstances justify the revival and extension of an expired patent, intervening rights shall be extended to persons using the subject matter of the patent after its expiration. Such rights shall not be provided in the case of statutory extension of unexpired patents, except that, in a case in which extreme injustice would result from the failure to provide such rights, they may be extended to persons who have, in good faith expectation of the expiration of the patent, made substantial preparation for use of the subject matter of the patent after its expiration.

(c) OTHER REQUESTS.—When the basis for a bill providing for a patent term extension is other than delay in premarket regulatory approval, the following requirements should be met before the bill is approved by the Congress:

(1)(A) Either governmental misconduct (as described in subjection (b)(1)), or action or inaction by the United States Government, contributed substantially to significant injury to the patent rights of the person requesting extension of the patent.

(B) For purposes of subparagraph (A), the action or inaction by the Government need not constitute governmental misconduct (as described in subsection (b)(1)), but must be of such a nature as to create a moral or ethical obligation on the part of the Government to provide relief to a person whose patent rights have been substantially injured by the action or inaction by the Government. Such action or inaction may include altering, by statute or rule, the regulatory approval procedures, standards, or requirements in a case in which there has been material reliance by an applicant on the prior procedures, standards, or requirements.

(2) The requirements set forth in paragraphs (2) through (4) of subsection (b) are met, except that—

(A) the reference in subsection (b)(2) to "governmental misconduct" shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection, and

(B) the reference in subsection (b)(2) to "delay in the approval process" shall be deemed to refer to "governmental misconduct", which shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection.

(d) LACK OF DUE DILIGENCE.—Notwithstanding the preceding provisions of this section, in no case should the Congress approve a bill providing for the extension of the term of a patent in the case of delay attributable to a lack of due diligence by the patent holder.

SEC. 2. PATENT EXTENSION FOR NONSTEROIDAL ANTI-IN-FLAMMATORY DRUGS.

(a) IN GENERAL.—The terms of United States patents numbered 3,793,457 and 4,076,831 shall each be extended for a period of 2 years beginning on the date of its expiration.

(b) LIMITATION ON RIGHTS.—The rights derived from any patent which is extended by this section shall be limited during the period of such extension to any use for which the subject matter of the patent was approved by the Food and Drug Administration before the date of the enactment of this Act.

SEC. 3. PATENT TERM EXTENSION FOR OLESTRA.

The terms of United States patents numbered 4,005,195, 4,005,196, and 4,034,083 (and any reissues of such patents) shall each be extended for a period beginning on the date of its expiration through December 31, 1997.

SEC. 4. EXTENSION OF PATENT FOR INSIGNIA.

A certain design patent numbered 29,611, which was issued by the United States Patent Office on November 8, 1989, which is the insignia of the United Daughters of the Confederacy, and which was renewed and extended for a period of 14 years by the Act entitled "An Act granting an extension of patent to the United Daughters of the Confederacy", approved November 11, 1977 (Public Law 95-168; 91 Stat. 1349), is renewed and extended for an additional period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 5. PATENT TERM EXTENSIONS FOR AMERICAN LEGION.

(a) BADGE OF AMERICAN LEGION.—The term of a certain design patent numbered 54,296 (for the badge of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(b) BADGE OF AMERICAN LEGION WOMEN'S AUXILIARY.—The term of a certain design patent numbered 55,398 (for the badge of the American Legion Women's Auxiliary) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(c) BADGE OF SONS OF THE AMERICAN LEGION.—The term of a certain design patent numbered 92,187 (for the badge of the Sons of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 6. INTERVENING RIGHTS.

The renewals and extensions of the patents under sections 4 and 5 shall not result in infringement of any such patent on account of any use of the subject matter of the patent, or substantial preparation for such use, which began after the patent expired but before the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5475 is the product of almost a year's work by the Subcommittee on Intellectual Property and Judicial Administration. It grew out of a group of nine separate bills referred to the committee, each of which would extend the term of a patent or patents.

Following a hearing on these bills last October, the Subcommittee on Intellectual Property and Judicial Administration determined that at least two of them involved substantial factual disputes. We therefore asked the General Accounting Office to do some factfinding analysis regarding the Food and Drug Administration review of the ansaid (H.R. 2255) and olestra (H.R. 2805) products.

After some 4 months, the GOA provided the subcommittee with reports which helped clarify the facts regarding FEA review of ansaid and olestra.

The subcommittee then met and decided to defer action on the specific bills until we first develop a set of standards which must be met before we

will favorably consider any bill providing for a patent term extension.

We also agreed that any bill favorably reporting a patent term extension should be a public and not a private bill.

As a reflection of these decisions, H.R. 5475 is a public bill which establishes standards for the consideration of future patent extension bills.

We decided not to apply these standards retroactively to the bills already pending. I doubt if any of the separate extension bills which are incorporated in this bill would qualify under these new, stricter standards. However, we feel that fairness dictates that these petitions be judged by preexisting standards, not by ones we formulated after these bills were introduced. Indeed, in our hearing last October on these bills, proponents and opponents alike quite properly focused their presentations on whether the particular fact situations in question met the 1984 standards developed by our committee.

The central requirement of the new standards is that the patent rights of the patentee who is seeking an extension were materially harmed by governmental action or inaction.

If the claim is that the harm resulted from unjustified delay in the regulatory approval process—and almost all cases are—the governmental action or inaction must constitute misconduct on the part of the Government. Mere delay in the regulatory process is not sufficient basis for a patent extension.

The bill enumerates various types of Government action which might constitute misconduct. In addition to egregious acts, such as deceitful, vindicative, or retaliatory action, misconduct can also be found in grossly negligent performance of governmental duties, or serious failure to perform those duties.

In examining the history of special legislation to grant statutory patent relief, we determined that, on some rare occasions, relief is appropriate even though there is no governmental misconduct. Examples are found in the governmental taking or curtailing of patent rights during time of war or national emergency. In these circumstances, the Government has not been guilty of misconduct—but nonetheless the patent owner was seriously harmed by governmental action, and there is a moral if not a legal obligation on the part of the Government to provide relief.

In addition to the formulation of standards for future cases, H.R. 5475 provides for patent term extensions in the case of five product patents and four design patents.

Deciding these individual cases was the tougher part of our work on these issues, and among the most difficult I have worked on in my 18 years in the House.

First, the facts were in serious dispute. After we sorted out the facts as best we could, we had to decide what was fair and in the public interest.

On the one hand is the interest of developers of these products, their stockholders and employees in seeing that they are given the opportunity to market their products and recover their investments.

These investments are massive. For example, the three products involved in this bill required from $100 to $230 million to develop. Without a fair chance to bring their drug or food product to market, these investments would not be made, and we would all suffer.

On the other hand, patent terms have always been limited, and for good reason. The inventor receives exclusive rights to make and market the invention for a limited period of time in exchange for full disclosure of how it is made, so that others may enter the competition when the term expires. This benefits not only competitors who wish to enter the market, but also, frequently, the public at large in the form of lower prices. Generic drugs are a prime example.

Let me describe for you what we decided on the individual patents, and why:

1. ANSAID AND LODINE

Patents for these two products, both nonsteroidal anti-inflammatory drugs, are each extended for 2 years. Both the Upjohn new drug application for ansaid and the American Home Products NDA for lodine encountered delays of more than 78 months before approval. This is three times the average review period at the time these applications were filed.

The delays were caused in part by FDA concern over serious results, including numerous deaths, which resulted from the use of other, previously approved drugs of the same category. Nonetheless there was a troublesome 2-year period during which it appears that, without reasonable explanation, no action at all was taken by the FDA. In short, I believe the FDA, stung by criticism of the approval of the earlier drugs, froze up and shut down work on these drugs for about 2 years.

Eventually—after 78 months in the case of ansaid and 96 months in the case of lodine—the FDA determined that both ansaid and lodin are safe and effective, and have none of the defects found in the earlier approved drugs. Under these circumstances, some short term of extension is appropriate. H.R. 5475 provides for a 2-year extension of each of these patents.

2. OLESTRA

Consideration of the appropriate review and approval process for this ground breaking product has vexed the FDA and Procter & Gamble, the company which developed it, for 20 years. One of the four patents involved in the olestra application, which has not yet been approved, has already expired. The patents cover various aspects of the noncaloric cholesterol-free sucrose polyester compound known as olestra. Olestra is a fat replacement product that can be used to flavor and texture food.

I do not believe that there is any justification for reviving the expired patent, or for granting the company's other request for an open-ended 10-year extension of the existing patents, to run from the time, if ever, that the FDA approves the food additive petition.

However, some relief is appropriate. The bill before us would extend the three unexpired olestra patents until December 31, 1997. This amounts to an extension of about 4 years for two of the patents, and 3½ years for the third.

If and when the FDA petition is approved, the company would be entitled to a 2-year extension under the Patent Term Restoration Act of 1984. However, if we enact this bill, it will take away that 2 years. The net effect of this bill is, therefore, an extension of only 1½ to 2 years.

We refused to provide an extension for the patent for an antiradiation drug developed under contract to the U.S. Army in the 1960's and known as WR 2721. That drug shows substantial potential for additional useful development.

However, we don't think that, standing alone, potentiality for future development is a proper basis for patent extension. The company—U.S. Bioscience—which owns the patent rights acquired those rights in 1987. The company bases its request for an extension upon the claim that, for many years, information regarding the potential for the drug was unavailable because of national security classification.

We checked with the Army, however, and found that the information was classified for no more than a 4-year period, and that this classification was lifted in 1965. The Army further reports that it in fact encouraged publication and development of the potentialities of the drug, beginning in the 1970's.

Furthermore, we don't think a company which bought patent rights in 1987 has a legitimate claim against the Government for something the Government may have done in the 1960's, long before the company bought into the patent, and even before it was issued.

DESIGN PATENTS FOR INSIGNIAS AND BADGES

Section 4 of the bill would renew and extend the design patent for the insignia for the United Daughters of the Confederacy.

Section 5 would renew and extend the design patents for the badges of the American Legion, the American Legion Women's Auxiliary, and Sons of the American Legion.

All of these four design patents have expired, and would be renewed and extended for a period of 14 years beginning on date of enactment. Intervening rights would be recognized to prevent

infringement actions against any persons who began use of the subject matter of these patents after their expiration and before the effective date of this act.

H.R. 5475 is a good bill. It lays down clear and appropriately tough standards for future statutory patent extensions.

It deals fairly with the bills filed under the old rules. It grants short extensions for products which were bogged down for excessive amounts of time in bureaucratic delay, and thus encourages the extremely expensive research and development that is necessary to bring beneficial new medicines and food products to consumers.

I urge your support.

□ 1510

Mr. Speaker, I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to express my strong support for passage of H.R. 5475, a bill to create new standards regarding patent extension approvals. My primary interest in this legislation concerns that section of the bill involving the macronutrient called olestra, which has been developed by the Procter & Gamble Corp.

Mr. Chairman, I first want to commend the chairman of the Subcommittee on Intellectual Property and Judicial Administration, the gentleman from New Jersey [Mr. HUGHES], and the ranking minority member of the subcommittee, the distinguished gentleman from California [Mr. MOORHEAD], for their patience and thoughtful contributions during our work on this project. Mr. Speaker, these two gentlemen provided the leadership necessary to craft a fair and innovative bill which will extend certain patents for a brief period of time while creating a new standard to be applied to future extension requests.

In addition to olestra, those products receiving patent extensions are two anti-inflammatory drugs, one licensed to the Uphohn Co., called ansaid; and the other owned by American Home Products, called lodine. Both drugs will receive 2-year extensions. Design patents for badges and insignia used by the United Daughters of the Confederacy and the American Legion will also be extended for 14 years.

The most important feature of the bill, Mr. Speaker, is the creation of new criteria to judge the merits of future requests. In brief: when a request for a patent term extension involves regulatory delay, the delay must have been beyond the control of the patent holder and directly caused by governmental misconduct. Unusual or unexpected delay alone will not constitute governmental misconduct. Further, the governmental misconduct must have caused a substantial inequity to the patent holder who will suffer material harm in the absence of an extension. Expired patents shall not be revived and extended, except under the most extraordinary and compelling circumstances. Requests based on circumstances other than regulatory delay need not constitute misconduct but must be of a nature to create a moral obligation on the part of the Government to supply relief.

No one involved in this process walked off with all of what he or she wanted. But the finished product in my opinion is something in which the subcommittee, especially its leadership, can take pride.

Mr. Speaker, I made the statement, you may recall, in full committee, I was reminded of a ship charting dangerous waters as we went through this with Mr. HUGHES and Mr. MOORHEAD, who led the subcommittee through what I call procedural waters infested with rocks on the one hand, reefs on the other, and shoals somewhere in the middle. But thanks to their leadership, and I will again use the word patience, we negotiated this very difficult course and, I think, came up with a very worthwhile finished product.

Mr. Speaker, as noted, I am most interested in obtaining relief for olestra. By way of background, olestra is a calorie-free fat substitute that looks, cooks, and tastes like ordinary fat, but adds no fat or calories to the diet. Procter & Gamble has been testing olestra since 1971, the year its first patent for the substance was granted. Since that time, Procter & Gamble has invested more than $180 million in research and development in the project, but because of the unique nature of olestra, has been unable to secure Food and Drug Administration approval of the product. The company plans to spend another $50 million over the next 2 years to obtain the necessary regulatory clearance.

□ 1520

The last point, I believe, Mr. Speaker, is crucial in understanding why extended patent protection for olestra is warranted. Back in the early seventies, some testing indicated that olestra contained cholesterol-reducing properties. Neither Procter & Gamble nor the FDA had ever encountered a substance like this one that processed the attributes of a drug, on the one hand, as well as a food additive, on the other.

There was a total absence of any precedent to guide Procter & Gamble as it sought to establish the proper testing protocols for olestra, or to enable the FDA to provide other guidance in the matter. Stated differently, the FDA was compelled to develop the rules of the game as it went along. Understandably—and after the fact—this resulted in a 20-year-plus delay in approval that persists to this day.

Mr. Speaker, we all know that patent extension bills are rarely approved. To do so routinely would encourage monopolistic behavior and ultimately hurt consumers through higher prices. They should only be granted under exceptional circumstances. Under the standard which has governed patent extension requests, however, Procter & Gamble's situation would more than justify the assistance contained in H.R. 5475.

The company initially requested a 10-year extension for four patents—one of which has already expired—from the date of regulatory approval. But the legislation before us only extends the unexpired patents for 3½ to slightly less than 4 years—at most—after expiration. The expired patent—the most important of the four—will not be extended at all. But this is still an equitable result, Mr. Speaker; Procter & Gamble will receive some protection for its exercise of good faith and commitment to regulatory compliance. As a simple matter of equity, it would otherwise be unfair to allow competitors to piggy-back on a $180 million investment when this corporation has exercised due diligence as it navigated, and continues to navigate, the regulatory maze at FDA, and I do not say there is fault against FDA, but it is, nonetheless, a regulatory maze.

Finally, Mr. Speaker, I think we have before us a fair, balanced, equitable bill, and I urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. HUGHES. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. STARK].

Mr. STARK. Mr. Speaker, I thank the distinguished gentleman from New York [Mr. MCHUGH] for yielding this time to me. He has yielded to me knowing that I have some reservations on the bill.

Mr. Speaker, H.R. 5475 deserves thoughtful consideration by every Member of the House. It is not without controversy, unfortunately, or differences of opinion on what is arguably a very complex subject.

First, Mr. Speaker, I would like to commend the thoughtful approach of the Committee on the Judiciary in establishing new strict standards for granting private patent extensions. Passage of this bill will have a significant effect on the normal course of business for thousands of American companies and their workers, not to mention millions of consumers.

Having said that, however, I think that what the bill gives with the one hand it immediately taketh away, and it grants special patent extensions to three companies without actually applying the new standards, and granting those extensions has been opposed by a variety of consumer interests: Public Citizen, Center for Science in the Public Interest, Citizens for Public Action on Blood Pressure and Cholesterol, Consumer Federation of America, Con-

sumers Union and the National Consumers League. It would be my hope that that portion of this bill would have been dropped had the bill been brought to the floor with a rulemaking in order an amendment to eliminate that portion of it. It seems to me that without the debate necessary to determine whether billions of dollars should be given away to three of the largest, most profitable pharmaceutical manufacturers in this country who already enjoy generous research and development tax credits, 936 credits for manufacturing in Puerto Rico, which gives almost $3 billion a year in taxpayer awards to these pharmaceutical companies, and they have just announced, in some cases, some 27 percent increase on some of the drugs covered under this bill.

How much are we going to ask the consumers of this country who are already burdened by the lack of decent cost containment of their medical expenses to bear? I think that is a topic worthy of debate.

I would like to see H.R. 5475 passed by this House. I would like to see it amended, and I would like to see the amendment discussed after thorough discussion of these particular issues.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, I thank the gentleman from North Carolina [Mr. COBLE] for yielding this time to me.

Mr. Speaker, I come before this body not deeply knowledgeable in reference to all the aspects of this bill, and I commend the committee for certainly coming up with new recommendations, new concepts, in regard to patent approvals.

However, Mr. Speaker, I have had contact from various groups, one within my 13th Congressional District, where they pointed out that they had relied upon the fact that a certain patient, described in this bill, would be expiring. This pertains to olestra, the fat substitute which indeed is quite a concept. They have spent approximately $40 million in research of olestra, assuming that there was a date certain when the patents pertaining to olestra would be terminated. So it does appear to me that there is controversy here and that perhaps it was not a bill that should be on the Suspension Calendar.

I did want to express my concern. I think somewhere along the line there should be some open debate on this subject because I am sure there are many others who have some of the concerns that I do have.

Mr. Speaker, I thank the gentleman very much for having yielded to me.

Mr. COBLE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I thank the gentleman from North Carolina [Mr. COBLE] for yielding this time to me, and, Mr. Speaker, I want to compliment the gentleman from New Jersey [Mr. HUGHES], the gentleman from California [Mr. MOORHEAD], and the gentleman from North Carolina [Mr. COBLE] for the extraordinary good work they have done in bringing together this bill which is very complicated, to say the least.

I know that the gentleman from North Carolina [Mr. COBLE] has done a splendid job in explaining the reason why I am here to extend the patent for olestra. The gentleman has mentioned that olestra is unique. It has taken Procter & Gamble over 20 years of research and uninterrupted dialog with the FDA. Procter & Gamble has invested something in the neighborhood of $185 million to research for olestra in pursuit of this innovation. It is a unique new food additive, and because it is unique, the Food and Drug Administration has been a long time in allowing for approval. Procter & Gamble has been diligent in pursuing FDA approval from the start, and, without the extension, Proctor & Gamble will lose all of its key patent rights by expiration through early 1994, about the same time that FDA would be expected to approve its use.

So, Mr. Speaker, I rise in support of this legislation. I think it is good legislation, but I especially think it is desirable because of the patent extension for olestra. There is a foreign-based competitor, I submit, ready, willing and able to pick up where Procter & Gamble is about to leave off if this extension is not granted. I think a failure to extend the extension of the patent for olestra would be unfair and a deterrent to long-term research and development.

□ 1530

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to say to my colleagues in California and Illinois that I understand the argument. I understand that there is a foreign corporation which is based in Rotterdam that has also invested a lot of money in this product, not nearly as much as has Procter & Gamble, and obviously they are opposed to the legislation because they stand to gain from this patent going into the public domain.

But let us just take olestra. The basic patent is already expired. It has been 20 years. We grant a 17-year patent. Putting aside the 2-year extension available under certain circumstances, we grant 17 years. That means that they have 17 years basically to receive the recoupment for that money. In the instance of Procter & Gamble, they have spent $180 million.

Now, while on the one hand once the patent falls into the public domain we benefit through the generic industry in particular in lower costs, but if companies will not invest because they cannot recoup their investment, then we do not get the patent to begin with and we do not get the products. That is the balancing we have had to do.

In the instance of olestra, the Food and Drug Administration did not know what to do with it. They had a macronutrient and they did not know what it was about and we did not have testing protocols in place. So it took all those years to get to the point where we are just moving that through the process now.

Just recently the Food and Drug Administration mandated new tests on pigs. That was a brew requirement. In the meantime, 20 years have gone by and their basic patent has expired.

Is that fair? I do not think that is fair.

In the instance of ansaid, ansaid was a closer call for us. Lodine, not so much. But ansaid, there was a 2-year period of time when apparently the FDA did very little if anything in processing that drug. It took a total of 78 months, when the average time should take 26 months. Is that fair? In the instance of lodine, it took 96 months. It is a very similar product.

Mr. Speaker, that takes away from the company's basic investment and makes it that much more difficult for those companies to recoup their investments.

We talk about industries having a hard time surviving in this economic climate today and competing with other companies around the world. Here is an instance basically where there is a basic unfairness. So we get down to the standard.

Mr. Speaker, I think my colleague is right. We agonized over whether to apply this tough new standard, but we thought to ourselves, is that fair to take a tougher new standard and apply it to pending cases?

We took testimony on the basis of a standard which says if you have delay and you have harm, that is a sufficient basis for a patent extension. Is it fair to change the rules in the middle of the game after you have taken testimony?

Mr. Speaker, I do not think so. That is where the subcommittee came down, that is where the full committee came down, and, Mr. Speaker, I think the subcommittee and the full committee in working their will came up with a fair and balanced bill to all concerned. Not just to the companies, but also to the public interest, which is served by getting these products on the market so we can benefit from these new medicines.

Mr. FISH. Mr. Speaker; I rise in support of H.R. 5472.

I would like to commend the gentleman from New Jersey [Mr. HUGHES] and the gentlemen from California [Mr. MOORHEAD], and North Carolina [Mr. COBLE] for their painstaking work and thoughtful analysis on these difficult issues. Our patent laws have served this coun-

try well. Patent protection provides the incentives to make investments and bring new products to market. It's important to protect and encourage this investment but we must at the same time be sensitive to the rights of others whose competitive commercial interest may be adversely affected by the extension of a patent. To balance these interests can be a very difficult assignment. Upjohn, American Home Products, and Procter & Gamble made a fair and reasonable case before the subcommittee.

Extending the term of a patent, even one that has expired is something the Congress can and has done for over 200 years. The use of special relief legislation was adopted by the First Congress, which passed the first two private bills in 1789. The first private patent extension was enacted in 1808. The acceptance of this special legislative function by Congress met with opposition early on—John Quincy Adams regarded it as a contradiction of the separation of powers. He thought that "a deliberative assembly is the worst of all tribunals for the Administration of Justice." I am sure some of you would agree with him, but my point is that H.R. 5475 represents a method of justice that's as old as the process itself. It's not an easy method, it's not a popular method and it may not be the best method, but the Judiciary Committee and its subcommittee have done this House and the Congress an important service by not only carefully considering the various bills currently before it, but also in developing guidelines that will aid in the consideration of future proposals. For this we are grateful and I urge support for H.R. 5475.

Mr. GRADISON, Mr. Speaker, I rise in support of H.R. 5475, a bill providing policies with respect to approval of bills providing for patent term extensions. At the outset, I want to commend the chairman of the subcommittee [Mr. HUGHES] and the ranking Republican member [Mr. MOORHEAD] for their cooperation, fairness, and deliberate consideration of the issues raised in this legislation.

Substantial congressional and judicial precedent exists for the extension of patent terms. However, this legislation represents the first instance in which Congress will establish statutory standards by which requests for patent term extensions are to be judged. These provisions are reasonable and they deserve the support of the House. It would, however, be unreasonable to apply these standards retroactively.

H.R. 5475 also incorporates the provisions of H.R. 2805, as amended, which I introduced last year. H.R. 2805 would have extended the terms on patents related to olestra, a noncaloric, nonabsorbable fat replacement, invented by the Procter & Gamble Manufacturing Co.

Due to the unique properties of olestra, its use as a food additive has not yet been approved by the Food and Drug Administration. The unique character of olestra has required the development of a new regulatory regime which was not foreseen when current law was written. As a result, no practical relief can be granted to the company under the Patent Restoration Act of 1984. Hence, the need for congressional action.

Mr. Speaker, the subcommittee, after deliberate consideration, chose not to extend the expired patent on olestra. The extensions the subcommittee did grant on the three remaining patents are for a period of 3 years.

In my view, this will provide some relief to the company and will also support an important public policy interest. Our interest in this House should be in supporting and encouraging innovation. Defeat of this legislation would not only defeat the standardization of patent term extension requests, as well as important patent protections for the American Legion and the United Daughters of the Confederacy, it would send a signal that this House is not prepared to give minimal support to innovation. It is a signal this House should not send.

I urge my colleagues to support the bill.

Mr. MOORHEAD. Mr. Speaker, I rise in support of H.R. 5475.

I would like to commend the gentleman from New Jersey [Mr. HUGHES] and the gentleman from North Carolina [Mr. COBLE] for the work product they bring before us today. The extensions provided for in this bill are, in my opinion, fair and just.

No one received all of what they asked for but having reviewed the record closely, we did try and provide a fair extension of those who, I think, made a good case.

The immediate problem for the subcommittee and the Judiciary Committee was to deal fairly with a group of very difficult patent extension bills that we found before us. And all of these bills are difficult. Because each of the applicants feels that they have a hardship, that the patent term is not sufficient to get their product approved by the Food and Drug Administration and their patents are going to expire before they have had an opportunity to put their product on the market, or before they could recover any of the costs of their research and development.

Obviously, the purpose of our patent system is so that people who spend their money on research and development of a product and take the risk will have an opportunity to try and recover their costs and make a profit before their patent expires. And the delays that have taken place in many instances, in getting their products to market, have been so long that they haven't had a chance to try and get any return on what are substantial investments.

We have struggled over all of these individual bills for a number of months. And in the end, I totally agree on the result contained in H.R. 5475.

What's important about this legislation are the standards we have developed for future consideration of patent term extensions. To statutorize standards by which to measure future legislation is unprecedented. Never before in the history of patent term extensions has a committee recommended a mechanism for dealing with these important and difficult cases. These standards are intended to be high, and difficult to meet, but they would also provide the subcommittee with the needed flexibility to deal with the extensions that are meritorious.

I think it is necessary that at least some leeway be there. But we want these rules tough enough so that we don't have a flood of bills from people whose patents are expiring, who think that they can come to Congress and receive an easy extension of their patent.

Our job is to try to bring some degree of fairness to these situations. And I believe that this is what H.R. 5475 does, and I certainly hope that it is adopted. If there are changes that are later needed down the line in the standards, they may be made by a future Congress. But for today, I think this is a good bill, and good policy and urge a favorable vote.

Mr. WOLPE. Mr. Speaker, I am one of the original cosponsors of legislation to extend that patent for ansaid, an anti-inflationary drug used to treat diseases like rheumatoid arthritis. Ansaid is manufactured by The Upjohn Co., which is headquartered in my district and which has been an outstanding corporate citizen during the more than 100 years since its founding.

H.R. 5475 provides some patent relief for ansaid, and I support the bill. I believe that the facts of the ansaid case unequivocally indicate this relief is warranted, and I have a lengthy statement that I would like to submit for the record which lays out those facts in significant detail.

I invite my colleagues—those of you who have not been as closely involved in this bill as I have—to examine the facts. These facts have been examined exhaustively by this body, by our Senate counterparts, by the FDA and by the Patent and Trademark Office, and, in an unprecedented step, by the GAO. These facts indicate that, through no fault on the part of the company, the ansaid application was subject to extraordinary regulatory delay.

BILL HUGHES, the chairman of the Intellectual Property Subcommittee of the Judiciary Committee, and the ranking minority member of that subcommittee, CARLOS MOORHEAD, looked at these facts. They looked also at the manner in which we here in Congress deal with patent extension requests, a role which extends back to the earliest days of this body. The subcommittee came up with standards to evaluate patent extension legislation in the future, but agreed that it would be inequitable, based on the facts of the ansaid case, to deny relief.

I think that the facts of the ansaid case are compelling. I believe that H.R. 5475 is a balanced and equitable bill, and I encourage my colleagues to vote yes.

THE FACTS OF THE ANSAID CASE

I. THE DEVELOPMENT OF ANSAID

For many decades, medical researchers have sought safe and effective treatments for the inflammatory diseases which affect large segments of the U.S. population. These diseases include rheumatoid arthritis, degenerative joint disease, bursitis and tendinitis, and they afflict virtually all Americans, from the elderly to the best trained athletes.

Aspirin has long been recognized as a potent anti-inflammatory drug and is still the drug of choice for many patients. Because of the serious gastrointestinal effects of aspirin, however, research continued in an effort to find a safer agent. Research conducted in the late 1950's and early 1960's resulted in the discovery of compounds now classified as "non-steriodal anti-inflammatory drugs" ("NSAIDs"). As a group, these drugs have anti-inflammatory properties comparable to aspirin but with fewer adverse gastrointestinal effects.

Indicin, a product of Merck Sharp & Dohme, was the first of these drugs to be ap-

proved, in 1965, but the approval of Motrin, an Upjohn product, in 1974 opened the gates for the introduction of fifteen more of these drugs over the next fourteen years. The NSAID field is now among the most competitive and consumer-oriented fields in the pharmaceutical marketplace. The development of Ansaid represents the next step in the progress of this important line of drugs.

II. THE ANSAID APPROVAL PROCESS

The Upjohn Company submitted its NDA for Ansaid (flurbiprofen) on March 29, 1982. At that time, the average period for approval of an NDA for an NSAID such as Ansaid was approximately two years. From 1974 through 1982, eight out of ten NSAIDs had been approved in 27 months or less.[1]

The animal studies and clinical trials of Ansaid had shown the drug to be both effective for the treatment of rheumatoid arthritis and osteoarthritis and remarkably free of serious side effects. The drug's profile was, in fact, quite similar to what was anticipated for drugs of this class. Upjohn therefore reasonably expected that its NDA would not present significant problems and that it would be approved within the two-year period required for approval of other NSAIDs in the 1974–1982 period.

Shortly after the Ansaid NDA was submitted, however, a series of events relating to other drugs unfolded, which dramatically lengthened the approval time for Ansaid. After approving ten NSAIDs in the immediately preceding eight years, the FDA did not approve *any* drugs of this class in 1983 or 1984, and only one in each of the next three years. Average NSAID approval times soared from slightly more than two years for drugs approved in 1982 and earlier to almost six years for those approved after that time. Because of these delays, Upjohn did not reach marketing approval for Ansaid until October 31, 1988, more than six years after its NDA was submitted.

These delays were caused by events pertaining to other NSAIDs, principally Oraflex, Feldene, Zomax, and Suprol. As a result of issues raised by those drugs, FDA slowed its new NSAID approvals for two primary reasons. First, significant Agency resources were devoted to resolving the questions raised by those particular drugs and were thus unavailable for reviewing new NSAID applications. Second, when FDA did turn to reviewing the pending NADs for this class of drugs, it gave them much closer scrutiny in light of the problems with other NSAIDs, and this also lengthened the time needed for approval.

In sharp contrast to the drugs and events described below, Ansaid has been used safely by millions of people in the United States and internationally. The safety of the product was never under any dispute at any time during the course of FDA review of the application for approval.

A. Oraflex

On April 19, 1982, FDA approved the NDA for Oraflex (Benoxaprofen), an NSAID indicated, like Ansaid, for treatment of reheumatoid arthritis and osteorathritis. The Oraflex NDA was submitted in 1980, and approval followed 27 months later, the average time then expected for NSAIDs. Almost immediately after this approval, however, FDA was forced to devote substantial resources to reviewing new information on the drug and reassessing its labeling, dosage, and risk-benefit ratio.

On April 24, 1982, The Lancet, a British medical publication, published a letter to the editor noting jaundice in three patients using benoxprofen in the United Kingdom.[2] A few weeks later, on May 8, 1982, the British Medical Journal published a "short report" describing the death of six elderly patients, all of whom had been taking benoxaprofen, from a liver disorder known as cholestatic jaundice.[3] FDA also received a letter on May 27, 1982, from a British government medical official pertaining to adverse events associated with benoxaprofen.[4]

These events and other reports prompted FDA to reconsider the labeling of Oraflex, especially as it concerned liver and kidney dysfunction, as well as the appropriate dosage for elderly patients. Senior FDA officials gave this matter their personal attention from the outset.[5] In addition, FDA personnel conducted careful investigations into the voluminous clinical data concerning the safety of Oraflex.[6] As part of its overall review, the Agency considered whether certain adverse events raised medical and scientific questions for NSAIDs as a class, in addition to whether they necessitated changes with respect to Oraflex in particular. The Agency also implemented changes in its DNA review procedures to ensure that medical officers based their decisions on the most current safety data available.[7]

FDA devoted a meeting of its Arthritis Advisory Committee on June 3–4, 1982, to the issue of liver toxicity for all NSAIDs. At the meeting, the Director of the FDA division responsible for NSAID approvals indicated his belief that almost all NSAIDs were associated with liver abnormalities and that additional information was needed to help develop classwide labeling revisions.[8] This association had not previously manifested itself as a significant clinical problem.[9]

Following this meeting, FDA reviewed proposed revised labeling for Oraflex. It ultimately approved revisions on July 12, 1982.[10] Reports continued, however, concerning the use of benoxaprofen overseas. Later that month, for example, the regulatory authorities in Denmark decided to restrict the drug to hospital use.[11]

At the same time, the Oraflex controversy continued to receive widespread public and media scrutiny in the United States.[12] The Health Research Group, a consumer advocacy organization, petitioned the Secretary of Health and Human Services to remove Oraflex from the market.[13] Six weeks later, the American Association of Retired Persons also petitioned the Secretary to ban the drug.[14] These organizations, joined by the National Council of Senior Citizens, sued the Department of Health and Human Services in federal court shortly thereafter in an attempt to force FDS to rescind the approval for Oraflex.[15] Responding to these efforts required substantial Agency resources.

On August 3 and 4, 1982, the Intergovernmental Relations and Human Resources Subcommittee of the House Committee on Government Operations held oversight hearings on FDA's regulation of new drugs.[16] The hearings concentrated almost exclusively on matters relating to Oraflex and Feldene (piroxicam), another NSAID (see below). Even before the hearings were held, FDA personnel had responded to congressional staff inquiries concerning Oraflex.[17]

FDA Commissioner Arthur Hull Hayes, Jr., M.D., and other FDA officials gave extensive testimony at these hearings. In fact, FDA officials were the only persons who testified during the two days of hearings. In discussing the NDA approval process, Commissioner Hayes noted that even the two years required for approval of Oraflex was a "lengthy" period, which was required because the NDA was particularly "complicated."[18] More straightforward NSAID applications presumably would take less time to approve.

FDA continued responding to congressional requests for information concerning Oraflex after the hearings were concluded.[19] Meanwhile, the manufacturer of Oraflex voluntarily suspended the sale and distribution of the drug on August 5, 1982.[20]

After several months of investigation, the House Committee on Government Operations released a report concerning Oraflex and recommending changes in FDA's adverse event reporting requirements and NDA review procedures.[21] On October 12, 1984, FDA Commissioner Frank E. Young, M.D., provided detailed responses to the Committee's recommendations.[22] In this response, Commissioner Young noted that the Agency had proposed changes in its new drug regulations in October 1982 and June 1983.[23] Those changes included modification of the reporting requirements.

In addition, FDA continued its own investigation of Oraflex. Following an extensive review, FDA referred the matter to the Justice Department in May 1983. A grand jury was later convened, and the manufacturer ultimately pleaded guilty to misdemeanor violations of the Federal Food, Drug, and Cosmetic Act on August 21, 1985.

B. Feldene

A substantial part of the August 1982 oversight hearings were devoted to FDA's approval of another antiarthritic NSAID, Feldene (piroxicam).[24] This drug was approved on April 6, 1982, following extensive FDA review of the clinical trial data in the NDA. Questions were raised at the hearing with respect to the effectiveness of the drug and certain press announcements concerning the drug.[25] Again, senior FDA management testified and responded to the Subcommittee's questions.

In the same report in which it discussed Oraflex, the Committee noted issues pertaining to Feldene as well.[26] As stated by the Committee, an FDA supervisory medical officer investigating Oraflex also raised questions pertaining to Feldene adverse event reporting.[27] The Subcommittee subsequently "brought this matter to the attention of senior FDA managers," and further FDA review ensued.[28] Thus, as with Oraflex, FDA officials spent considerable time investigating the facts pertaining to Feldene. More than a year after the hearing, FDA was still reviewing the reporting of adverse events associated with Feldene and responding to congressional inquiries on this matter.[29]

C. Zomax

In the spring of 1983, as FDA continued its Oraflex and Feldene investigations, the Agency found itself facing yet another controversy involving another NSAID, Zomax (zomepirac sodium). After approval in 1980, Zomax was withdrawn from the market by its manufacturer on March 4, 1983, "because of fatal and near fatal adverse reactions to the drug."[30]

For at least a year prior to the removal of Zomax from the market, FDA medical officials with responsibility for new drugs in general and NSAID's in particular had devoted considerable time and effort to reviewing data on Zomax and considering changes in the drug's labeling.[31] During this period, and especially after the market withdrawal, issues pertaining to Zomax "received a good deal of publicity."[32]

The Intergovernmental Relations and Human Resources Subcommittee held over-

[1] Footnotes at end of article.

sight hearings concerning Zomax on April 26 and 27, 1983.[33] Commissioner Hayes again appeared before the Subcommittee, accompanied by several other senior FDA officials.[34] In his testimony, the Commissioner discussed FDA's adverse event monitoring systems, and in particular a newly developed system that "logs all reports * * * regardless of source and tracks the review process until the report is entered into the [Drug Experience Information System] file."[35] The Commissioner also noted that the adverse events associated with Zomax were considered in light of the drug experience profiles for NSAIDs as a class, and that the Agency carefully considered overall drug experience patterns for the NSAIDs in this context.[36]

The removal of Zomax from the market prompted intense FDA scrutiny of all NSAIDs. For example, FDA prepared an extensive "summary of [adverse drug experience] reports, by year, for all nonsteroidals on the basis of market share."[37] In addition, Agency officials analyzed reports pertaining to several NSAIDs to determine whether those drugs were associated with the same type of hypersensitivity or anaphylactic (allergic) reactions that led to the withdrawal of Zomax.[38] FDA was particularly concerned with the possibility that "the apparent increase in hypersensitivity [to Zomax] * * * [was not] really different from other NSAID drugs used the same way," and that "if other NSAIDs were used intermittently, they too would have a greater frequency of hypersensitivity reactions."[39] FDA therefore conducted an "indepth analysis * * * by examining all nonsteroidal exposed patients" in a data base of records from 300,000 Medicaid patients."[40] In addition, the Agency developed tabulations of more than 18,000 adverse events for all NSAIDs from 1969 through 1983, and presented these to the Subcommittee during the hearings.[41]

The Commissioner and other FDA officials also responded to extensive questioning from the Subcommittee. Most fundamentally, the Subcommittee was concerned whether FDA was "really doing an objective job," or instead "trying to find justification for having approved a product."[42] Commissioner Hayes responded that the Agency was not "seeking a justification but rather * * * trying to find the right answer" in light of all available "scientific data."[43] While the discussion focused primarily on Zomax, the Subcommittee emphasized that "[w]e are really talking about appropriate policy and procedures of the Agency, including questions of adequate staffing and effective management practices."[44]

In this regard, the Subcommittee pointed to a 1982 report of the General Accounting Office concerning areas in which FDA's adverse event monitoring systems could be improved, and asked what steps had been taken to implement the recommendations contained in that report.[45] The Commissioner responded that Agency officials "have addressed and continue to address" these issues.[46] For example, considerable FDA resources were devoted to maintaining and improving FDA's computer tracking system.[47] FDA officials also explained that an indepth epidemiological study of adverse event information for even a single drug is an especially "labor intensive" undertaking.[48] The Subcommittee questioned whether a computer system could be implemented specifically to track adverse events reported with respect to NSAIDs.[49] FDA responded that the issues involved in any tracking system are "very complicated" and its system in particular is "complex."[50] Resources also were devoted to answering inquiries from the Subcommittee about specific Zomax adverse event reports and other issues.[51] Finally, the Subcommittee reviewed documents pertaining to two NSAIDs with NDAs then pending at FDA to determine whether they raised safety issues related to Zomax.[52]

On December 2, 1983, the House Committee on Government Operations issued a report concerning "FDA's Regulation of Zomax."[53] Among other things, the Committee recommended that "FDA establish procedures for prompt processing, review, and analysis of all adverse reaction reports for marketed drugs."[54] The controversial nature of the entire Zomax episode and of certain of the Committee's findings is reflected in the numerous dissenting and additional views accompanying the report.[55]

D. Suprol

After a virtual moratorium on NSAID approvals, FDA finally approved a new NSAID, Suprol (suprofen), on December 24, 1985. A few months later, however, the drug's manufacturer began receiving reports of unusual adverse kidney effects, frequently combined with flank pain, associated with Suprol. Sales of the drug ultimately were halted on May 18, 1987, in the face of mounting criticism.[56]

Reports of the flank pain syndrome associated with Suprol had begun to appear almost immediately after the drug was approved for marketing.[57] Subsequently, numerous reports were made to FDA, and the Agency became occupied with reviewing new and revised labeling for the drug. An article also appeared in the June 1986 edition of the FDA Drug Bulletin.[58] In addition to the Agency itself, Advisory Commission reviewed Suprol in light of the new adverse events reports.[59] FDA resources were also devoted to responding to a petition filed in September 1986 seeking the removal of Suprol from the market.[60]

Once again, FDA officials testified at a House oversight hearing devoted to examining the Agency's NSAID regulatory processes. Among the issues raised by the House Subcommittee at the hearing were whether FDA adequately investigated the drug sponsor's reporting of adverse drug events and whether the Agency had properly weighed the risks and benefits of the drug.[61] The overall goal of the hearing was to use the case of Suprol to evaluate "whether or not our current system of drug regulation and surveillance works."[62]

At the hearing, FDA officials emphasized the difficulty of detecting rare adverse events in the clinical trials prior to NDA approval, since those trials are generally limited to a few thousand patients.[63] Following the hearing, FDA supplied a detailed chronology of events relating to Suprol. as well as written responses to certain questions raised at the hearing.[64] FDA had also answered questions from the Subcommittee chairman prior to the hearing.[65]

E. Contrast: The Approval of Ocufen

Review of the case of FDA approval of Ocufen, an ophthalmic solution containing flurbiprofen sodium—a salt of the active ingredient in Ansaid—suggests that the delay in approving Ansaid was due to events relating to other NSAIDs, and not to the nature of the product itself.

The NADA for Ocufen for use in the inhibition of intraoperative miosis was submitted by Allergan on December 19, 1984—more than two years after the NDA for Ansaid. It was approved in just two years, on December 31, 1986—almost two years before Ansaid would be approved.

The review time for Ocufen was similar to the mean review time (22 months) for all new molecular entities reviewed by the Division of Anti-Infective Drugs during the period 1980 through 1988. Thus, flurbipofen was approved for ophthalmic use without significant regulatory delay. The delay in approving Ansaid, by contrast, can be viewed as directly associated with the crises involving other orally administered NSAIDs.

III. CONGRESSIONAL REVIEW OF ANSAID PATENT EXTENSION LEGISLATION

H.R. 5475 includes a set of standards by which Congress can evaluate future patent extension request. The bill has been criticized for expanding several patents, under previously existing standards of equity and extraordinary circumstances, and applying the new standards only prospectively. The assumption underlying this argument is that because the new standards were not in use, the extensions in H.R. 5475 were granted without regard to any standard or process. In the case of Ansaid, however, nothing could be further from the truth.

Ansaid legislation has been considered by this Congress for well over a year. It was introduced in May of last year, with 28 original co-sponsors. It has been the subject of hearings in three Committees, including: the Intellectual Property Subcommittee of the House Judiciary Committee; the Health and the Environment Subcommittee of the House Energy and Commerce Committee; and the Patent and Trademark Subcommittee of the Senate Judiciary Committee. The Patent Office and the FDA testified at all of those hearings.

At the request of Representative Bill Hughes, Chairman of the Intellectual Property Subcommittee of the House Judiciary Committee, and Senator Dennis DeConcini, Chairman of the Patent and Trademark Subcommittee of the Senate Judiciary Committee, the GAO conducted an unprecedented investigation into the facts of the FDA's approval of Ansaid. The Upjohn Company cooperated completely with GAO investigators.

The following outline indicates the nature and extent of the Congressional consideration of the Ansaid patent term extension.

1. H.R. 2255 introduced May 8, 1991.

29 Cosponsors, including 16 Democrats and 13 Republicans.

Cosponsors: Bonior, Broomfield, Bryant, Camp, Carr, Coble, B. Collins, Conyers, R. Davis, Feighan, Fish, W. Ford, Gekas, Henry, Hertel, Hoagland, Kildee, M. Levine, S. Levin, McCollum, Moorhead, Pursell, Richardson, Schiff, Synar, Traxler, Upton, Vander Jagt and Wolpe

2. Hearing held on August 1, 1991 on S. 1165 (Senate counterpart of H.R. 2255) by the Patents, Copyrights and Trademarks Subcommittee of the Senate Committee on the Judiciary

Testimony by Theodore Cooper, M.D., Ph.D., Chairman and CEO, The Upjohn Company; Harry F. Manbeck, Jr., Commissioner of Patents and Trademarks; Stuart Nightingale, M.D., Associate Commissioner, FDA

3. Hearing held on October 31, 1991 on H.R. 2255 by the Intellectual Property and Judicial Administration Subcommittee of the House Committee on the Judiciary

Testimony by Theodore Cooper, M.D., Ph.D., Chairman and CEO, The Upjohn Company; Stuart Nightingale, M.D., Associate Commissioner, FDA

4. Hearing held on February 20, 1992 by the Health and Environment Subcommittee of the House Committee on Energy and Commerce

Testimony by Theodore Cooper, M.D., Ph.D., Chairman and CEO, The Upjohn Company

5. Markup of S. 1165 held on May 21, 1992 by the Patent Subcommittee

6. Markup of H.R. 2255 held June 11, 1992 by the Intellectual Property Subcommittee: H.R. 2255 reported out as part of a clean bill, H.R. 5475

7. Markup of H.R. 5475 held July 22, 1992 by the full House Judiciary Committee: bill reported favorably to the full House, without amendment (voice vote)

This lengthy process of review was based on a standard that has evolved over the long course of Congressional consideration of patent extensions, which, as Representative Fish pointed out during the full Judiciary Committee markup of H.R. 5475, Congress has approved since its inception.

That standard has been stated in a variety of ways, but it is fundamentally one of equity: Congress has in the past weighed the merits of each individual case, and has made a decision based on the equities. The new standards enunciated in H.R. 5475 are a reasonable attempt to make this general concept of equity more specific. But as Chairman Hughes explained at the markup, it is not fair to require a company which has invested a great many resources in making a case under an older standard to make another case under a new standard.

It would be particularly unfair to Upjohn. The patent for Ansaid expires in February of 1993. Application of the new standards would require additional hearings, another review by the Patent Office and by FDA, a new GAO report, and reconsideration by the appropriate Congressional committees. In light of the lengthy consideration this bill has already had, and the short time remaining on the patent, application of the new standards would not be equitable.

IV. THE GAO REPORT

The GAO conducted an investigation of the circumstances of the FDA delay in the approval of the Ansaid application. This unprecedented step, never before included in a Congressional review of a patent extension request, resulted in a report which was, in part, the basis for the relief granted in the Intellectual Property Subcommittee's bill. The extensions in H.R. 5475 have nevertheless been criticized as unsupported by the GAO report.

As the following excerpts indicate, however, this is a completely specious charge.

Upjohn's preparation of the NDA: No unusual delay.

"From our review of agency and company documentation and our own analysis, it appears that Upjohn did not unnecessarily delay submitting its NDA." GAO Report at 5.

Application reviews take longer; May 1984 through May 1986

"Upjohn's primary arguments * * * to support its claim that the patent term for Ansaid should be extended are most relevant to this 2-year period. FDA acknowledges that, during this time, its reviews took longer." GAO Report at 8.

The impact of unusual circumstances on the FDA

"FDA did indeed face an unusual set of events from 1982 through 1987, which affected its operations. . . . Compared with the pre-1982 approval time, the average time taken to approve NSAID NDAs nearly doubled." GAO Report at 8.

V. CONCLUSION: THE PUBLIC POLICY REASONS FOR SUPPORTING A PATENT EXTENSION FOR ANSAID

There are general public policy reasons for patent extensions which concern adequate reward for innovation. Congress has traditionally served as a safety valve in the rare situations in which the rigidities of our otherwise effective patent system would prevent appropriate compensation for inventors.

But in the case of Ansaid, there is also a more specific public health reason for supporting the Ansaid extension. The Upjohn Company is sponsoring research into additional uses for Ansaid. Promising work is being done in a variety of areas, including post-surgical pain, fractures, and gout. Upjohn is also supporting research by Dr. Tom Aufdemorte, who is working at the UT Health Science Center in San Antonio. Dr. Aufdemorte has discovered some interesting possibilities for the use of Ansaid in treating osteoporosis, a disease which seriously diminishes the quality of life of many elderly women. Without additional market exclusivity, however, Upjohn will not be able to afford to continue this support.

In summary: H.R. 5475 is a balanced and equitable bill. The case of Ansaid has been meticulously made and documented in several Congressional forums. The legislation has been subject to hearings and public markup. There are sound public policy reasons for this extension. The bill is worthy of support.

FOOTNOTES

[1] This is illustrated in the following table:

Year of approval	Name of drug	Approval time (months)
1974	Motrin (ibuprofen)	18
1976	Nalfon (fenoprofen calcium) ...	22
1976	Naprosyn (naproxen)	23
1976	Tolectin (tolmetin sodium)	20
1978	Clinoril (sulindac)	27
1980	Meclomen (meclofenamate sodium).	39
1980	Zomax (zomepirac sodium)	22
1982	Feldene (piroxicam)	48
1982	Oraflex (benoxaprofen)	27
1982	Dolobid (diflunisal)	22

However, only five NSAIDs were approved from 1983 through 1988, and only three of those are currently being marketed. Suprol (suprofen) was approved in 1985 following an 86-month review period, and was withdrawn from the market in May 1987. Orudis (ketoprofen) was approved in 1986 after 46 months. Voltaren (diclofenac) was approved in 1987 after 55 months. Remedial (karprofen) was approved in 1988 after 87 months, but has not been marketed. Ansaid was approved in 1988 after a 79-month review period.

[2] "Jaundice associated with the use of benoxaprofen," Lancet 959 (Apr. 24, 1982). *See The Regulation of New Drugs by the Food and Drug Administration: The New Drug Review Process*, Hearings Before a Subcomm. of the House Comm. on Gov't Operations, 97th Cong., 2d Sess. 105 (1982) [hereinafter cited as *New Drug Hearings*].

[3] Taggart and Alderice, "Fatal cholestatic jaundice in elderly patients taking benoxaprofen," 284 Brit. Med. J. 1372 (May 8, 1982). *See New Drug Hearings, supra*, at 104.

[4] *See* "Deficiencies in FDA's Regulation of the New Drug 'Oraflex,'" Fourteenth Report by the House Comm. on Gov't Operations, H.R. Rep. No. 511, 98th Cong., 1st Sess. 3 (1983) [hereinafter cited as "Oversight Report"].

[5] *See, e.g., New Drug Hearings*, supra, at 108 (memorandum of phone conversation concerning Oraflex between FDA's Acting Director, Office of New Drug Evaluation, and Lilly physician); id. at 112-113 (memorandum of meeting concerning Oraflex; attendees included FDA's Director and Associate Director, Bureaus of Drugs and Biologics).

[6] *See, e.g.*, id. at 98-99 (setting forth FDA memorandum concerning benoxaprofen adverse event reporting).

[7] *See id.* at 526-527 (setting forth memorandum from Dr. Temple concerning review of investigational files prior to NA approval).

[8] Adv. Comm. Transcript, pp. 156-157.

[9] *See, e.g., id.* at 106.

[10] *See* "Oversight Report," supra, at 3.

[11] *See id.*

[12] *See, e.g.*, "Oraflex Case Seen Changing Drug Industry," Wall St. J., Sept. 20, 1982, at 33.

[13] *See* "Warning About Using Anti-Arthritis Drugs Is Urged by U.S. Panel," Wall St. J., June 18, 1982, at 32.

[14] *See* "Arthritis Drug Stirs Ban Effort," Wash. Post, July 31, 1982, at A-4.

[15] *See* "3 Groups Suing To Bar Arthritis Drug Oraflex," Wash. Post, Aug. 3, 1982, at A-13.

[16] *See New Drug Hearings, supra.*

[17] *See, e.g., id.* at 119 (memorandum of telephone conversation between Dr. Harter of FDA and Mr. Sigelman of the Subcommittee staff).

[18] *Id.* at 16.

[19] *See, e.g., id.* at 532, 559-561 (letters from Commissioner Hayes to Representative Fountain).

[20] *See id.* at 564.

[21] *See* "Oversight Report," *supra*, at 8.

[22] *See* letter from Commissioner Young to Representative Weiss (Oct. 12, 1984).

[23] *See id.*; 47 Fed. Reg. 46622 (Oct. 19, 1982) (NA regulations); 48 Fed. Reg. 26720 (June 9, 1983) (investigational new drug, or "IND," regulations). The revised regulations became final in 1985 and 1987. *See* 50 Fed. Reg. 7452 (Feb. 22, 1985) (NA regulations); 52 Fed. Reg. 8798 (Mar. 19, 1987) (IND regulations).

[24] *See, e.g., New Drug Hearings*, supra, at 367.

[25] *See, e.g., id.* at 368-404, 508-512.

[26] *See* "Oversight Report," *supra*, at 7, 21-22.

[27] *See id.* at 7.

[28] *Id.* at 21.

[29] *FDA's Regulation of Zomax: Hearings Before a Subcomm. of the House Comm. on Gov't Operations*, 98th Cong., 1st Sess. 440-447 (1983) [hereinafter cited as Zomax Hearings].

[30] *Id.* at 2.

[31] *See, e.g., id.* at 108-119, 125-127.

[32] *Id.* at 91. As Dr. Harter of the FDA explained with respect to the withdrawal of Zomax from the market, "I think the news media got more interested; it got more publicity than one might expect, because the Tylenol thing had preceded it, and here was a company with a similiar—not the same problem—but from the news people's viewpoint a similar problem, deaths from a drug." Transcript of Arthritis Advisory Committee Meeting, May 12, 1983, at 9 [hereinafter cited as Advisory Comm. Tr.].

[33] *See Zomax Hearings, supra.*

[34] *See id.* at 85, 124.

[35] *Id.* at 88.

[36] *See id.* at 89. An FDA official explained to the Arthritis Advisory Committee that while it may seem to "be an easy thing" to review the relevant epidemiologic data, "it is clear that it is not" because the "reaction is rare enough that it is hard to get the noise out so you can start seeing the reaction you are really interested in." Advisory Comm. Tr., *supra*, at 10.

[37] *Zomax Hearings, supra*, at 89.

[38] *See id.*

[39] *Id.* at 90.

[40] *Id.* at 89.

[41] *See id.* at 102-104.

[42] *Id.* at 96 (Mr. Weiss).

[43] *Id.* at 97.

[44] *Id.* at 124 (Mr. Weiss).

[45] *See id.* at 132-134.

[46] *Id.* at 133.

[47] *See id.*

[48] *Id.* at 283, 285.

[49] *See id.* at 285 (Mr. Weiss).

[50] *Id.* at 286.

[51] *See id.* at 327-333, 509-532.

[52] *See id.* at 533-555.

[53] "*FDA's Regulation of Zomax*," Thirty-First Report by the (House Comm. on Gov't Operations, H. Rept. No. 584, 98th Cong., 1st Sess. (1983).

[54] *Id.* at 27.

[55] *See id.* at 28-36.

[56] *See FDA's Regulation of the New Drug Suprol*, Hearing Before a Subcomm. of the House Comm. on Gov't Operations, 100th Cong., 1st Sess. 417-418 (1987).

[57] *See id.* at 35-36.

[58] *See id.* at 36-41.

[59] *See id.* at 42.

[60] *See id.* at 364.

[61] *See id.* at 2.

[62] *Id.* at 3.

[63] *See id.* at 364.

[64] *See id.* at 412-433.

[65] *See id.* at 336-366.

Mr. COBLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HUGHES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 5475, as amended.

The question was taken.

Mr. STARK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

LIBERIAN RELIEF, REHABILITATION, AND RECONSTRUCTION ACT OF 1992

Mr. DYMALLY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 994) to authorize supplemental appropriations for fiscal year 1991 for relief, rehabilitation, and reconstruction in Liberia, as amended.

The Clerk read as follows:

H.R. 994

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Liberian Relief, Rehabilitation, and Reconstruction Act of 1992".

SEC. 2. LIBERIAN RELIEF, REHABILITATION, AND RECONSTRUCTION.

(a) FINDINGS.—The Congress finds that—

(1) as a result of a protracted civil war, a general breakdown of law and order, the displacement of up to one-half of the country's population, the destruction of significant sections of the infrastructure, and the resulting economic collapse, the people of Liberia are suffering from—

(A) several malnutrition and life-threatening disease conditions;

(B) a total collapse of Liberia's agricultural market due to abandoned farmlands and displaced farmers; and

(C) a nationwide dismantling of the health, educational, and sanitation systems; and

(2) because of a long, historical, and special relationship with the Republic of Liberia, it is in the interest of the United States, and it is also in the interest of the international community, to respond to the urgent needs of the people of Liberia and to assist in every way possible that country's effort to restore democracy and promote democratic institutions.

(b) STATEMENT OF POLICY REGARDING ASSISTANCE FOR LIBERIA.—It is the policy of the United States to continue to commit increased diplomatic resources for the purposes of resolving the fundamental political conflicts that underlie the protracted humanitarian emergency in Liberia.

(c) SUPPORT FOR PEACEKEEPING EFFORTS.—It is the sense of the Congress that the President should continue to support the peacekeeping efforts in Liberia being carried out by the Economic Community of West African States (ECOWAS).

(d) INTERNATIONAL DISASTER ASSISTANCE FOR LIBERIA.—Chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292–2292p) is amended by adding at the end thereof the following new section:

"SEC. 495L. LIBERIAN CIVIL STRIFE ASSISTANCE.

"(a) IN GENERAL.—The President is authorized to provide assistance for civil strife relief, rehabilitation, and general recovery in Liberia. In providing such assistance, priority shall be given to activities that—

"(1) coordinate and enhance the efforts of the United States, Liberia, and international private and voluntary organizations to provide relief, rehabilitation, and recovery projects in Liberia;

"(2) assist in the restoration of services in Liberia that provide water and power;

"(3) encourage and facilitate the provision of health care, including activities relating to the provision of primary health care;

"(4) encourage and facilitate the restoration of educational services, including activities relating to the provision of educational services to displaced children; and

"(5) contribute to efforts by the international community to respond to the relief and development needs of the people of Liberia.

"(b) HUMANITARIAN PURPOSES.—Assistance provided under this section shall be for humanitarian purposes.

"(c) AVAILABILITY OF FUNDS.—Funds made available for the purposes of this chapter may be used to carry out this section.

"(d) GENERAL POLICIES AND AUTHORITIES.—Except as otherwise provided in this section, assistance under this section shall be furnished in accordance with the policies and general authorities contained in section 491.".

"(e) RESTRICTIONS ON ASSISTANCE TO LIBERIA.—For fiscal years 1992 and 1993, assistance under the Foreign Assistance Act of 1961 may be provided to the Government of Liberia only if the President determines and reports to the Congress that the Government of Liberia has achieved substantial progress toward reconciliation and toward free and fair elections that are monitored by international observers. This section shall not be construed to affect the provision of humanitarian assistance of the provision of assistance to nongovernmental organizations for activities to enhance progress toward reconciliation and free and fair elections in Liberia.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. DYMALLY] will be recognized for 20 minutes, and the gentleman from Nebraska [Mr. BEREUTER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 994 supports the democratic process in Liberia and hopes to provide both an incentive as well as broaden the scope of participation in the relief, rehabilitation, and recovery effort in this war-torn country.

This measure was updated and amended recently when it passed the Committee on Foreign Affairs unanimously. The amended version of this bill permits the U.S. Government to provide limited assistance for elections and troop encampment, demobilization, and retraining.

It is important that the United States Congress support diplomatic and peacekeeping efforts in Liberia to remedy the collapse of the economic, agricultural, health and educational systems in this country. It is my hope that we can act favorably on H.R. 994 so the position of the United States in support of the democratic movement in Liberia will be defined and clarified.

Mr. Speaker, this bill basically is a signal to the Liberians, both sides, to say that the United States is willing to lend support to Liberia if they can come to a reconciliation of the conflict which has torn that country apart.

More recently, Mr. Speaker, a staff member met with the Liberians in Dakar, Senegal, during the meeting of ECOWAS, and expressed the anxiety of Congress to see a resolving of that problem there, but further expressed a fear that if the situation is not settled soon enough, they may soon be forgotten.

Mr. Speaker, I am hopeful as a result of this measure and as a result of our discussions with them last week in Dakar, Senegal, during the ECOWAS meeting, that there will be another push to resolve the dilemma that is faced between the two sides.

Mr. Speaker, I have a letter for the RECORD from the Congressional Budget Office, which states:

The Congressional Budget Office has reviewed H.R. 994, the Liberian Relief, Rehabilitation, and Reconstruction Act of 1992, as ordered reported by the House Committee on Foreign Affairs on June 18, 1992. Enactment of the bill would not affect the budgets of Federal, State, or local government.

Mr. Speaker, the letter goes on to say it does not in any way appropriate any funds and gives the President the authority to do essentially what we did under the leadership of the gentleman from Nebraska [Mr. BEREUTER].

Mr. Speaker, this bill is almost a carbon copy of a measure which passed this House to develop the policy and position to bring some peace and stability to Liberia as we did in the Horn.

Mr. Speaker, I submit the letter referred to for the RECORD.

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 1992.

Hon. DANTE B. FASCELL,
Chairman, Committee on Foreign Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 994, the Liberian Relief, Rehabilitation, and Reconstruction Act of 1992, as ordered reported by the House Committee on Foreign Affairs on June 18, 1992. Enactment of the bill would not affect the budgets of federal, state, or local governments.

The bill would authorize the President to provide civil strife and rehabilitation assistance to Liberia, and also would authorize the use of disaster assistance funds for those purposes. Because the President currently has authority to provide assistance to Liberia, and because the bill would not provide any additional authorizations of appropriations, enactment of the bill would not affect federal spending.

The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

The CBO staff contact is Kent Christensen, who can be reached at 226-2840.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Mr. Speaker, I reserve the balance of my time.

Mr. BEREUTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in Liberia a brutal civil war has brought terrible devastation. In that country, as in so many other places around the world today that are wracked by civil war, we see the terrible results when ethnic strife and class conflict replace orderly government.

We all share a desire to aid the people of Liberia, a nation that enjoys a unique, positive, and longstanding relationship with the United States. It is appropriate, therefore, that H.R. 994 authorizes relief assistance for Liberia, and urges support for the peacekeeping efforts of the Economic Community of West African States [ECOWAS].

This Member would note that the United States has, in fact, already responded rapidly and appropriately to the crisis in Liberia. President Bush has already provided $160 million in aid and almost $25 million to the members and organization of ECOWAS since the war began in late 1989.

It is this Member's understanding that the administration does not oppose passage of this legislation. And, while the administration already has the authority to do much that is provided for in this legislation, passage of H.R. 994 will send an important signal that Congress will not ignore the bloodshed and misery in Liberia.

Mr. Speaker, this Member would commend the efforts of the chairman of the Subcommittee on Africa, the gentleman from California [Mr. DYMALLY]. He has always worked diligently to raise this body's awareness of the suffering and misery in Africa. This Member would commend him for his resolution.

Mr. Speaker, this Member would also urge adoption of this resolution.

□ 1540

Mr. Speaker, this Member would commend highly the efforts of the chairman of the Subcommittee on Africa, the gentleman from California [Mr. DYMALLY]. He has always worked diligently to raise this body's awareness of the suffering and misery in Africa.

This Member would commend him for introducing and championing this resolution. While there are months yet ahead, let me take this opportunity, since I am speaking on this legislation and since he is no seeking reelection, to commend him for the outstanding leadership that he has brought to the House Committee on Foreign Affairs and to the Congress by his many initiatives.

Mr. Speaker, this Member would also strongly urge adoption of the resolution by the U.S. House of Representatives.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DYMALLY. Mr. Speaker, I yield myself such time as I may consume.

I thank my friend for his kind comments. Had he made those comments before February 10, I never would have retired. I thank the gentleman very much for his kind words.

He also has done an outstanding job, and this is really a carbon copy of the leadership he provided on the Horn. We thank him for his leadership.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. DYMALLY] that the House suspend the rules and pass the bill, H.R. 994, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "An act to authorize assistance for civil strife relief, rehabilitation, and reconstruction in Liberia."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There is no objection.

COMMENDING THE PEOPLE OF THE PHILIPPINES

Mr. LANTOS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 348) to commend the people of the Philippines for successfully conducting peaceful general elections and to congratulate Fidel Ramos for his election to the Presidency of the Philippines.

The Clerk read as follows:

H. CON. RES. 348

Whereas achieving the first peaceful and constitutional succession of elected presidents is one of the most difficult and important steps in the establishment of democratic government;

Whereas the Philippines, under the leadership of President Corazon Aquino, has successfully completed this democratic transition, and thereby, secured the final victory of the 1986 "Peoples Power Revolution";

Whereas Fidel Ramos was a key participant in the 1986 Peoples Power Revolution that ended the Marcos dictatorship, and subsequently played a crucial role in opposing 6 abortive coup attempts that threatened to overthrow the democratically elected government;

Whereas newly-elected President Fidel Ramos will face the important challenge of continuing the difficult economic and political reforms begun by his predecessor;

Whereas despite a series of natural disasters (including earthquakes, typhoons, and volcanic eruption), the Philippine economy has turned from annual contraction under the previous regime to a yearly growth rate of 3 to 4 percent;

Whereas the American people can be proud of the role the United States has played in helping Filipinos succeed in the reestablishment of democracy in their country and in beginning free market economic reforms; and

Whereas despite the withdrawal of United States Armed Forces from Clark Air Field and Subic Bay Naval Station, the United States and the Philippines continue to be bound together by their Mutual Defense Treaty and to share important security interests in the region: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That in light of the continued strong security and economic interests shared by the United States and the Philippines as well as our deep cultural and historic ties, the Congress—

(1) congratulates Fidel Ramos on his election to the Presidency of the Philippines;

(2) commends the people of the Philippines for institutionalizing democratic government in their country by supporting peaceful and constitutional elections;

(3) urges the President of the United States to strongly support continued economic and political reform by the new Philippine Government; and

(4) believes a new era has begun in United States-Philippine Government; and

(5) believes a new era has begun in United States-Philippine relations and recommends that a post-bases relationship be built on the cooperative pursuit of mutually beneficial goals.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. LANTOS] will be recognized for 20 minutes, and the gentleman from Nebraska [Mr. BEREUTER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. LANTOS].

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

At the outset, I would like to pay tribute to the distinguished chairman of our subcommittee, the gentleman from New York [Mr. SOLARZ], the distinguished Republican ranking member, the gentleman from Iowa [Mr. LEACH], and our colleague, the gentleman from Guam [Mr. BLAZ] for bringing this resolution before us.

What does this resolution do? It states basically that the Congress of the United States commends the people of the Philippines for institutionalizing Democratic government in their country by supporting peaceful and constitutional elections. Our resolution congratulates Fidel Ramos on his election to the Presidency of the Philippines. It urges President Bush to support strongly continued economic and political reform by the Government of the Philippines.

The resolution reminds us that a new era has begun in United States-Philippine relations and recommends that, in light of United States withdrawal from our bases in the Philippines, a new bilateral relationship be built on a cooperative pursuit of mutually beneficial goals.

It should be recalled, Mr. Speaker, that the people power revolution in the Philippines, some 6½ years ago, was the first in a long series of peaceful and nonviolent democratic revolutions. It was a courageous effort, given the authoritarian tenor of the times. And the fact that it succeeded gave inspiration and confidence to people across this globe to strike out on behalf of democracy.

The question may well be asked: Would the freedom fighters in Warsaw or Prague or Bucharest or Moscow have been so courageous had the Philippine experiment failed? The Filipino democracy movement has made the repression of similar movements in Beijing and Rangoon all the more reprehensible. So whatever may happen in the Philippines, we should be ever grateful to the Filipino people for contributing to the more peaceful and democratic world order that exists today.

Mr. Speaker, a key transitional point in the life of a new democracy is the transfer of power from the first group to the second group of leaders. Just as Thomas Jefferson's inauguration marked the maturing of American democracy, so the assumption of power by Fidel Ramos from Cory Aquino is a significant event in the consolidation of democracy in the Philippines. It is an event well worth commemorating.

Our relationship with the Philippines, Mr. Speaker, was much more than access to Clark Air Force Base and to our naval base at Subic. For the future we should base our relations not on the end of that access but on everything else: The history of our very benign colonial rule, the strong cultural influence we continue to have on the islands, our powerful economic presence in the Philippines represented by about $2 billion in American investment, and our status as the No. 1 trading partner of the Philippines.

Equally important is our political kinship with another democratic people who have made a tremendous contribution to our own society—the 3 million Filipino-Americans.

I believe, Mr. Speaker, that this concurrent resolution will not only pay tribute to the institutionalization of democracy in the Philippines but will serve to strengthen United States-Filipino relations for many years to come.

Mr. Speaker, I reserve the balance of my time.

Mr. BEREUTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the recent elections in the Philippines and the smooth transition from President Aquino to President Ramos are important developments in Philippine politics. They reinforce the momentum toward democracy that we witness around the world. When an elected leader in a country such as the Philippines is able to turn over the reins of power through the election process, this surely advances the growth of democracy in Asia.

The resolution before us today recognizes this fact, and as recognized by my distinguished colleague from California [Mr. LANTOS], congratulates both President Ramos on his election and the Philippine people for their support of the democratic process. It also recognizes the serious economic and political reforms that need to take place in the Philippines, and urges President Bush to support the efforts of the Philippine Government to address them.

The United States has enjoyed a long and special relationship with the Philippines and its people, a relationship that has spanned nearly this entire century. In years past, Americans and Filipinos have stood side by side to fight totalitarian aggression. But, as strategic relationships have evolved, we find ourselves on the threshold of a new era in United States-Philippine relations. This Member sincerely hopes that our ties, our shared and positive history, and our mutual interests will serve as a solid foundation for continued cooperation and friendship between our two nations and peoples.

Mr. Speaker, this Member would congratulate the author of this resolution, the distinguished gentleman from New York [Mr. SOLARZ]—a man who probably knows more about the Philippine political situation than any Member of this body. This Member would also congratulate the distinguished gentleman from Iowa [Mr. LEACH], the ranking member of the Asia Subcommittee for working effectively to move this resolution forward. Lastly, this Member would recognize the leadership of the distinguished chairman and ranking minority member of the Foreign Affairs Committee, the gentlemen from Florida [Mr. FASCELL] and Michigan [Mr. BROOMFIELD] who have spent their career advancing the cause of democracy worldwide.

Mr. Speaker, this Member would urge adoption of House Concurrent Resolution 348.

□ 1550

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend my good friend and colleague, the gentleman from Nebraska [Mr. BEREUTER] for his eloquent support of this legislation, and I want to join him in paying tribute to the two outstanding members of the Committee on Foreign Affairs, our chairman and ranking Republican member, the gentleman from Florida [Mr. FASCELL] and the gentleman from Michigan [Mr. BROOMFIELD], as they are ready to retire from this body. They have both made enormous contributions to the globe in terms of peace, cooperation, and understanding.

Mr. BENNETT. Mr. Speaker, I rise in strong support of House Concurrent Resolution 348.

The Filipino people have demonstrated in war and in peace a strong adherence to democratic principles. The election of President Ramos in a truly democratic election is a tribute to him, to President Aquino, and to all Filipino people. Warm congratulations are due to all of them who made this possible.

Mr. Speaker, as a guerrilla in the Philippines in World War II, I owe my life to my Filipino comrades-in-arms of that time. As an American and a veteran of the war, I am grateful to the Filipino people for this further milestone in the progress of this beautiful country.

Mrs. MINK. Mr. Speaker, I rise in support of House Concurrent Resolution 348 in praise of our friends and allies of the Republic of the Philippines, for the recent free election that saw Mr. Fidel Ramos elected to the Presidency of that democracy. A new age has dawned on this overcast country, and the continued support of the American people and Government is critical to the stability and effectiveness of the Ramos administration to revitalize the Philippine nation.

About one-fifth of the State of Hawaii's population is of Filipino background, 200,000 persons with an abiding interest in the well-being of their ancestral homeland. Across the United States we have more than 2 million Filipinos in all walks of life that share an equal reverence and concern that the bonds that exist between the Philippines and America remain strong and secure. Bonds that were forged in battle and tempered by our common dedication to democracy and economic opportunity.

Our Filipino allies have endured incredible tribulations and misfortunes in recent times, both manmade and natural, that must now be confronted and remedied by President Ramos and his new administration.

The extraordinary "People's Power" legacy of former President Corazon Aquino, which literally revolutionized the Philippines, must be acknowledged as well. Her personal integrity and example inspired her citizens to renew their faith in themselves, and the conduct of the recent Philippine national elections is a tribute to the democratic spirit that once again radiates from this proud, but congenial people.

House Concurrent Resolution 348 congratulates Fidel Ramos on his election, commands the people of the Philippines for institutionalizing democratic government in their country by supporting peaceful and constitutional elections, urges our President to strongly support continued economic and political reform by the new Philippine Government, and expresses our country's belief that a new era has begun in our joint relations built on the cooperative pursuit of mutually beneficial goals.

It is a pleasure and honor to express my approval of this timely resolution, Mr. Speaker, and I look forward to working with our compadres in President Ramos' administration and the Philippine Congress to bring its provisions to fruition.

Mr. LANTOS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. LANTOS] that the House suspend the rules and agree to House Concurrent Resolution 348.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LANTOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Concurrent Resolution 348, which was just adopted by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ALASKA PENINSULA WILDERNESS DESIGNATION ACT OF 1992

Mr. MILLER of California. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 1219) to designate wilderness, acquire certain valuable inholdings within national Wildlife Refuges and National Park System units, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1219

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Alaska Peninsula Wilderness Designation Act of 1992".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "land" means lands, waters, and interests therein;

(2) The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, the title is in the United States, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provisions of Federal law; and

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished.

(3) The term "Native Corporation" means any Regional Corporation, any Village Corporation, any Native group and those Native entities which have incorporated pursuant to section 14(h)(3) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(3)).

(4) The term "Regional Corporation" has the same meaning as such term has under section 3(g) of the Alaska Native Claims Settlement Act.

(5) The term "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act.

(6) The term "Native group" has the same meaning as such term has under sections 3(d) and 14(h)(2) of the Alaska Native Claims Settlement Act.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Alaska Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (72 Stat. 339), as amended.

(9) The term "State" means the State of Alaska.

(10) The term "Koniag" means Koniag, Incorporated, a Regional Corporation.

(11) The term "Selection Rights" means those rights granted to Koniag pursuant to sections 12(a), 12(b), and 14(h)(8) of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, to receive title to the oil and gas rights and other interests in the subsurface estate of approximately two hundred and seventy-five thousand acres of public lands in the State of Alaska which lands are identified as "Koniag Selections" on the map entitled "Koniag Interest Lands, Alaska Peninsula", dated May 1989.

(1) The term "agency" includes—

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government identified in chapter 91 of title 31, United States Code.

(13) The term "property" has the same meaning as is provided the term in section 12(b)(7) of Public Law 94-204 (43 U.S.C. 1611 note), as amended.".

SEC. 3. DESIGNATION OF WILDERNESS.

(a) DESIGNATION OF WILDERNESS.—The public lands within the boundaries depicted as "Proposed Wilderness" on the following identified maps are hereby designated as wilderness, and therefore as components of the National Wilderness Preservation System, with the nomenclature and approximate acreage as indicated below:

(1) Aniakchak Wilderness of approximately five hundred and three thousand acres within the Aniakchak National Monument and Preserve and which is generally depicted upon the map entitled "Aniakchak Wilderness" dated July 1992.

(2) Alaska Peninsula Wilderness of approximately one million eight hundred and seventy-six thousand acres within the Alaska Peninsula National Wildlife Refuge and which is generally depicted upon the map entitled "Alaska Peninsula Wilderness" dated July 1992.

(3) Approximately three hundred and forty-seven thousand acres within the Becharof National Wildlife Refuge as an addition to the existing Becharof Wilderness, as generally depicted upon the map entitled "Becharof Additional Wilderness" dated July 1992.

(b) MAP AND LEGAL DESCRIPTION.—As soon as practicable after the enactment of this Act, a map and legal description of each wilderness area designated by this Act shall be published in the Federal Register and filed with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate. Each such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and map. A copy of each map shall be available for public inspection in an appropriate office of the National Park Service and the Fish and Wildlife Service, Department of the Interior.

(c) LANDS INCLUDED.—Except for those lands subject to Koniag Selection Rights which are subsequently relinquished pursuant to section 5, only those lands within the boundaries of any wilderness area which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such area. No lands within the boundaries of any wilderness area designated pursuant to section 3(a) hereof and which, before, on, or after the date of enactment of this Act, are conveyed to the State, to any Native Corporation, or to any private party, shall be subject to the regulations applicable solely to public lands within such wilderness areas. Any lands subject to Koniag Selection Rights relinquished to the United States pursuant to section 5 which are within the boundaries of a wilderness area designated by this Act shall become part of such wilderness areas and be administered accordingly.

SEC. 4. MANAGEMENT OF WILDERNESS AREAS.

(a) GENERALLY.—Except as provided in subsection (b) of this section, and subject to valid existing rights, the lands designated as Aniakchak Wilderness by this Act shall be managed by the Secretary of the Interior in the same manner as the lands designated as wilderness by section 701 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), and the other lands designated as wilderness by this Act shall be managed by such Secretary in the same manner as the lands designated as wilderness by section 702 of such Act.

(b) PERMITS.—(1) Any special use or concession permit which was in existence during 1991 for operations on lands designated as wilderness by this Act and which except for designation of such lands as wilderness could have remained in effect or been renewed by or reissued to the same permittee, may be renewed or reissued to such permittee, may be renewed or reissued to such permittee, subject to the provisions of this subsection.

(2) Nothing in this Act shall require renewal or reissuance of a permit if the Secretary, for reasons other than the designation of lands as wilderness, determines that such action would be inconsistent with applicable law or established regulations. Nothing in this Act shall preclude the Secretary from canceling or otherwise restricting any permit for any reasons other than the designation of lands as wilderness.

(3) No renewal or reissuance of a permit described in paragraph (1) of this subsection shall be for a period longer than the lifetime of the permittee, and no such permit shall be transferable or assignable.

(4) Designation of lands as wilderness shall not prevent any structures and other improvements authorized by a permit described in paragraph (1), including cabins, from continuing to be used, maintained, and if necessary, replaced, to the extent otherwise permissible, but no additional structures or other improvements shall be permitted on lands so designated.

SEC. 5. ACQUISITION OF KONIAG SELECTION RIGHTS.

(a) IN GENERAL.—(1) If the Secretary receives from Koniag a timely tender of relinquishment of the Selection Rights, the Secretary shall accept such tender no later than 60 days after its receipt, and shall notify the Secretary of the Treasury of such acceptance.

(2) For purposes of this subsection, a tender by Koniag shall be timely if it is received by the Secretary no later than 180 days after either—

(A) receipt by Koniag of the Secretary's determination of the value of the Selection Rights pursuant to subsection (b) of this section, or

(B) the outcome of the procedures established by subsection (b) of this section for resolution of any dispute regarding such value,

whichever last occurs, unless the Secretary and Koniag agree to modify his deadline.

(b) VALUE.—(1) The value of the Selection Rights shall be equal to the fair market value of the oil and gas interests, and where appropriate the fair market value of the subsurface estate of the lands or interests in lands.

(2) Within 90 days after the date of enactment of this Act, Koniag and the Secretary shall meet to determine the identity of a qualified appraiser who shall meet to determine the identity of a qualified appraiser who shall perform an appraisal of the Selection Rights in conformity with the standards of the Appraisal Foundation and utilizing the methodology customarily used by the Minerals Management Service of the Department of the Interior in valuing such interests. Such appraiser shall be selected by the mutual agreement of Koniag and the Secretary, or if such agreement is not reached within 60 days after such initial meeting, then Koniag and the Secretary, no later than 90 days after such initial meeting, shall each designate an appraiser who is qualified to perform the appraisal. The 2 appraisers so identified shall select a third qualified appraiser who shall perform the appraisal. Within 180 days after the selection of the third appraiser, a written appraisal report setting out the value of the Selection Rights and the methodology used to arrive at it, shall be delivered to the Secretary and to Koniag.

(3) Within 60 days after the receipt of the appraisal report described in paragraph (2), the Secretary shall determine the value of the Selection Rights and shall immediately notify Koniag of such determination. The determination of value shall be considered final agency action for purposes of judicial review under chapter 7 of title 5, United States Code. If Koniag does not agree with the value as determined by the Secretary, the procedures specified in section 206(d) of Public Law 94-579, as amended, shall be used to establish the value, but the average value per acre of the Selection Rights shall not be more than $300.

SEC. 6. KONIAG ACCOUNT.

(a) ESTABLISHMENT.—(1) Notwithstanding any other provision of law, on October 1, 1997, the Secretary of the Treasury, in consultation with the Secretary, shall establish a Koniag Account.

(2) Beginning on October 1, 1997, the balance of the account shall—

(A) be available to Koniag for bidding on and purchasing property sold at public sale, subject to the conditions described in paragraph (3); and

(B) remain available until expended.

(3)(A) Koniag may use the account established under paragraph (1) to bid as any other bidder for property (wherever located) at any public sale by an agency and may purchase the property in accordance with applicable laws and regulations of the agency offering the property for sale. Notwithstanding any other provision of law, the right to draw against such account shall be assignable in whole or in part by Koniag, but no assignment shall be recognized by the Secretary of the Treasury until written notice thereof is filed with the Secretary of the Treasury and the Secretary of the Interior by Koniag.

(B) In conducting a transaction described in subparagraph (A), an agency shall accept, in the same manner as cash, any amount rendered from the account established by the Secretary of the Treasury under paragraph (1). The Secretary of the Treasury shall adjust the balance of the account to reflect the transaction.

(C) The Secretary of the Treasury, in consultation with the Secretary of the Interior, shall establish procedures to permit the account established under paragraph (1) to—

(i) receive deposits;

(ii) make deposits into escrow when an escrow is required for the sale of any property; and

(iii) reinstate to the account any unused escrow deposits in the event sales are not consummated.

(b) AMOUNT.—The initial balance of the account established in subsection (a) shall be equal to the value of the Selection Rights as determined pursuant to section 5 of this Act.

(c) TREATMENT OF AMOUNTS FROM ACCOUNT.—(1) The Secretary of the Treasury shall deem as cash payments any amount tendered from the account established pursuant to subsection (a) and received by agencies as proceeds from a public sale of property, and shall make any transfers necessary to allow an agency to use the proceeds in the event an agency is authorized by law to use the proceeds for a specific purpose.

(2)(A) Subject to subparagraph (B), the Secretary of the Treasury and the heads of agencies shall administer sales pursuant to this section in the same manner as is provided for any other Alaska native corporation authorized by law as of the date of enactment of this section (including the use of similar accounts for bidding on and purchasing property sold for public sale).

(B) Amounts in an account created for the benefit of a specific Alaska native corporation may not be used to satisfy the property purchase obligations of any other Alaska native corporation.

(d) REVENUES.—The Selection Rights shall be deemed to be an interest in the subsurface for purposes of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MILLER] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MILLER].

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 15 legislative days in which to revise and extend their remarks on H.R. 1219.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. I yield such time as I may consume. Mr. Speaker, I rise in support of H.R. 1219, the Alaska Peninsula Wilderness Designation Act of 1992. This is a historic day for the gentleman from Alaska and I am pleased to stand with him in support of this bill that benefits both the environment and the Alaska Native community.

H.R. 1219 designates 2.7 million acres of wilderness within three conservation system units on the Alaska Peninsula and acquires 275,000 acres of inholdings within those units.

Although Alaska wilderness designations have generated significant controversy in the past, this legislation was sponsored by the gentleman from Alaska and received bipartisan support from the Interior Committee.

In the 1980 Alaska National Interest Land Conservation Act [ANILCA], Congress designated 104 million acres of new or expanded conservation system units on public lands in Alaska. The state contains about 75 percent of the Nation's total park land and about 90 percent of the Nation's wildlife refuge lands.

Section 1317 of ANILCA directs the Secretary of the Interior to review all Alaska National Wildlife Refuge System lands and National Park System lands that are not already preserved as wilderness to determine their suitability for wilderness designation. In turn, the President is required to submit recommendations to Congress.

According to a General Accounting Office investigation done at the Interior Committee's request, U.S. Fish and Wildlife Service planning teams determined that an additional 52.6 million acres in Alaska wildlife refuges would qualify for wilderness designation. Despite a 1987 deadline established by section 1317 of ANILCA for submitting recommendations to Congress, the administration has yet to comply with the law.

The wilderness designations included in this legislation are within the Alaska Peninsula National Wildlife Refuge, the Becharof National Wildlife Refuge, and the Aniakchak National Monument and Preserve. The designations largely reflect the recommendations of the managers of each of the three conservation system units.

In order to eliminate inholdings which pose an obstacle to wilderness designation, the legislation provides for the acquisition on a willing seller basis of 275,000 acres of Alaska Native Claims Settlement Act oil and gas selection from Koniag, Inc., an Alaska Native regional corporation. In Exchange for Koniag's selection rights, the fair market value of which will be determined by the Department of the Interior in an appraisal process, Koniag will be compensated with a property account that can be used to purchase

excess Federal property. The Koniag selection rights can be valued at no more than $300 per acre.

Significantly, the legislation specifies that the revenues received by Koniag will be subject to the revenue sharing provisions of section 7(i) of ANCSA.

Under section 7(i), 70 percent of the revenues received by an Alaska Native regional corporation from the development of subsurface estate or timber are required to be shared among the other regional corporations, who in turn make distributions to their village corporations and at large shareholders. Increasingly, it is evident that ANCSA section 7(i) revenue sharing is critical to the economic viability of many Native corporations.

I would like to commend the gentleman from Alaska for his sponsorship of this legislation.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1219, the Alaska Peninsula Wilderness Designation Act of 1991. This legislation would consolidate land ownership in Alaska, benefit Native Alaskans in the Kodiak Island area, and make possible the designation of wilderness in an area where there are no conflicts with other economic development potential.

I would like to express my appreciation to Chairman MILLER and his staff for the way in which they have worked on this legislation. My guess is that it is such a rare occasion to see DON YOUNG introducing a wilderness bill, that they wanted to move it along as quickly as possible before I changed my mind.

Unfortunately, over the course of the years the perception has grown up that I am opposed to all wilderness designations in the State of Alaska. That's not true—I am not opposed to all wilderness—just most of it. I think wilderness designation must be measured against the needs of the people who live in Alaska and other States. I think lands owned by the public should be used to help alleviate joblessness and to help resolve social ills, just as public resources in the form of moneys are used to alleviate joblessness or compensate the unemployed. I am opposed to the broad, sweeping designations of wilderness simply for the sake of playing the acreage game, without regard for impact that such action has on people. I believe that this bill is an excellent example of what we can do when we work together.

There is no question that the lands being designated as wilderness by H.R. 1219 are eligible wilderness. But H.R. 1219 also avoids including lands which are necessary for the economic survival of Alaskans. The transportation corridors, which were recognized as being important to the development of the region, are left intact and available for use when the need arises.

Likewise, this legislation also contains provisions for the protection of the people who earn their livelihoods from these lands, some of whom have been out there since before the parks and refuges were created.

Under the provisions of this bill, their rights to continue to use the lands for which they hold permits will not be cut off simply because there is a change in the status of the lands and they are designated as wilderness. In keeping with this intent, I fully expect both the Fish and Wildlife Service and the Park Service to honor the commitment that we are making to these individuals—that they will not be harassed because of their use, nor will their permits be changed or revoked.

Another significant aspect of this legislation is the role that Koniag has played in making its inholdings in these wilderness areas available for acquisition in order to make the designations possible. Without its agreement, Koniag's inholdings would have been a major impediment to the wilderness designations.

Because of the nature of these inholdings, Koniag would have the right not only to develop the lands it selected but also the right of access across adjacent Park and Refuge lands. The development of the Koniag lands and its use of its access rights could have made management of the federal lands under a wilderness designation more difficult for the agencies.

Since the hearings were held on my bill, Koniag and the staff have worked out what appears to be a satisfactory method of compensation. Rather than the OCS lease credits in the original bill, Koniag has agreed to accept the right to acquire government property no longer required for the government's use. We have limited the use of this provision until after October 1, 1997.

Again I would like to express my appreciation to the chairman and the staff of the committee in working with us to produce this bill. When we started out, I have to admit that I didn't know whether we would be successful in reaching our goal but it appears that so far we have.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 1219, the Alaska Peninsula Wilderness Designation Act of 1992.

H.R. 1219 addresses the management of two units of the National Wildlife Refuge System. For this reason, the bill was sequentially referred to the Committee on Merchant Marine and Fisheries. The committee ordered the bill reported by voice vote on July 23, 1992.

H.R. 1219 would designate as wilderness about 2.7 million acres within three conservation areas on the Alaska Peninsula. It would also acquire for the Federal Government 275,000 acres of oil and gas selection rights from the Koniag Alaska Native Regional Corporation.

The oil and gas selection rights are inholdings that could disrupt the management of these parks and refuges. H.R. 1219 will eliminate the inholdings, remove obstacles to wilderness designation, and generally improve the management of these conservation areas. H.R. 1219 also provides appropriate, but not excessive, compensation to the Alaska Native Regional Corporations.

I urge my colleagues to support H.R. 1219.

Mr. PANETTA. Mr. Speaker, H.R. 1219 designates certain public land in Alaska as wilderness and authorizes the purchase of rights and interest in those lands held by the Koniag Native Corp. To compensate the corporation, the bill establishes an account in the Treasury that will contain the equivalent of the fair market value of those rights and interests. The corporation will be able to use the account to bid on and purchase Federal property sold at public sale. The bill provides new budget authority and it is direct spending.

When the Committee on Interior and Insular Affairs reported H.R. 1219, it was subject to a point of order under section 302(f) of the Budget Act. The bill was estimated to increase budget authority and outlays by the Federal Government in 1997 by up to $83 million and that new budget authority caused the Committee to exceed its allocation for the 5-year period, 1993–97.

Today, the House is considering H.R. 1219 with an amendment that shifts the date of the establishment of the Koniag Native Corp. account from fiscal year 1997 to fiscal year 1998. Avoiding the Budget Act windows does not, however, resolve the direct spending implications of the bill. H.R. 1219 was not paid for in 1997 and is not paid for in 1998.

I will note that the estimated cost of H.R. 1219 is somewhat fluid. The bill affects 275,000 acres and caps the valuation at $300 per acre, therefore, it could increase direct spending by up to $83 million. However, that figure assumes each acre will be valued at the maximum permitted. According to the cost estimate, CBO expects the value per acre to be significantly less than $300, but does not estimate the low end of the range of possible costs.

In light of the budgetary implications of H.R. 1219, I will continue to monitor its progress through the Senate and House and I continue to urge the committee to resolve the direct spending issues contained in the bill.

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and pass the bill, H.R. 1219, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

TECHNICAL AMENDMENTS TO CERTAIN FEDERAL INDIAN STATUTES

Mr. MILLER of California. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 5686) to make technical amendments to certain Federal Indian statutes, as amended.

The Clerk read as follows:

H.R. 5686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CORRECTION OF LAND DESCRIPTION WITH RESPECT TO THE GRAND RONDE RESERVATION.

Section 4(b) of Public Law 100-425 (25 U.S.C. 713f note) is amended by striking "SE¼NE¼" in the fourth column of the description of the 47th tract of land listed in such subsection and inserting the following: "SE¼NE¼,E½SW¼".

SEC. 2. EXTENSION OF DEADLINE WITH RESPECT TO PONCA ECONOMIC DEVELOPMENT PLAN.

Section 10(a)(3) of the Ponca Restoration Act (25 U.S.C. 983h(a)(3)) is amended by striking "2" and inserting "3".

SEC. 3. EXPENDITURE OF JUDGMENT FUNDS.

(a) CROW TRIBE JUDGMENT FUND.—Notwithstanding any other provision of law, or any distribution plan approved pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary of the Interior may reprogram, in accordance with Crow Tribal Resolution 91-14, any and all remaining funds (principal and interest accounts) which were awarded in satisfaction of the judgments in Indian Claims Commission Docket No. 54 (1961) and United States claims Court Docket Nos. 796-71 and 797-71 (1981).

(b) SHOSHONE-BANNOCK JUDGMENT FUND.—Notwithstanding any other provision of law, or any distribution plan approved pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary of the Interior may reprogram, in accordance with Shoshone-Bannock Tribal Resolution GNCL-91-0616, dated July 19, 1991, any and all remaining funds (principal and interest accounts) which were awarded in satisfaction of the judgment in Indiana Claims Commission Docket No. 326-C-2 (1985).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MILLER] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chairman recognizes the gentleman from California [Mr. MILLER].

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5686.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, H.R. 5686 is sponsored by Congressman RHODES. The amended bill makes technical amendments to four Federal statutes. The first provision would correct a land description contained in the Grand Ronde Reservation Act. The second provision would extend the time period for the Secretary of the Interior to develop an economic development plan for the Ponca Indian Tribe of Nebraska.

The third provision allows the Crow Indian Tribe of Montana to reprogram judgment funds. The fourth provision allows the Shoshone-Bannock Indian Tribe of Idaho to reprogram judgment funds. The measure is noncontroversial and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5686, which was introduced by the Gentleman from Arizona, [Mr. RHODES]. As the Gentleman from California has indicated, H.R. 5686 would make technical amendments to certain Federal Indian Statutes.

The first is the correction of a land description. Pursuant to the Grand Ronde Reservation Act, the selection of lands available for establishment of the reservation was limited to public lands administered by the BLM. The lands eventually chosen consisted of a tract of Oregon and California Railroad grant lands. To compensate for the BLM's loss of this tract, section 4 of the act redesignated a series of Federal public domain land parcels as revested Oregon and California railroad grant lands.

Section 4(B) sets forth descriptions of the 48 redesignated land parcels. The 47th tract, however, is incorrectly identified. This legislation would correct that oversight. I should note that there have been two prior corrections made to the land descriptions set forth in section 4(B), one in 1988 and another in 1990. I trust this will be the last.

The second technical amendment contained in the bill is to the Ponca Restoration Act of 1990, which restored Federal recognition to the Ponca Tribe of Nebraska. Section 10 of that act directs the Secretary of the Interior to establish an economic development plan with the tribe. Subsection 10(A)(3) directs the Secretary to submit the plan to Congress within 2 years of enactment—by October 31, 1992.

H.R. 5686 would extend the 2-year deadline for submission by a year, and is necessary because the Ponca Act was signed into law on October 31, 1990, in the very early stages of fiscal year 1991. No appropriations were provided to fund the Ponca's development plan that year, and the tribe had to wait a full year, until fiscal year 1992, for the appropriation of its planning funds. By extending the submission deadline by 1 year, the tribe and the Secretary will be allowed a full 2 years to develop and submit the plan, in keeping with the original intent of the Congress.

Section 3 of H.R. 5686 would allow the Secretary of the Interior to reprogram amounts remaining in certain judgment fund accounts of two tribes: The Crow Tribe of Montana and the Shoshone-Bannock Tribe of Idaho.

Under the provisions of the Indian Judgment Fund Distribution Act—25 U.S.C. §1401 et seq—up to 80 percent of any judgment award to a tribe can be distributed on a per capita basis. The remaining funds are to be used for the benefit of the tribe pursuant to a plan reached between the tribe and the Secretary of the Interior. In the case of these two tribes, however, those plans have run their course, leaving a remainder of unspent funds in the accounts. However, the funds cannot be used for any purpose other than those originally specified in the tribe's plan, even if that purpose no longer exists. This bill would remedy that problem, by allowing the two tribes to use the funds remaining in their accounts, with the approval of the Secretary, for projects beneficial to their members.

In the case of the Crow Tribe, about $664,500 remains in the trust accounts set up for the tribe with money from judgment awards in Indian Claims Commission docket No. 54, and U.S. Court of Claims docket Nos. 796-71 and 797-71. In docket No. 54, a programming plan for the claims award was approved in 1962; the balance of that fund is about $121,300. The moneys from judgments in docket. Nos. 796-71 and 797-71, about $247,000, were never programmed. The principal and interest in these funds now equals approximately $543,200. This bill would allow the tribe to use the funds for beneficial projects on the reservation.

As for the Shoshone-Bannock Tribe, the original $5.8 million judgment award to the tribe from Indian Claims Commission docket No. 326-C-2 was subject to a plan devised by the tribe and the Secretary in which 80 percent of the fund was distributed per capita to tribal members. The remaining 20 percent was to be used for land acquisition, and the interest on the 20 percent was supposed to be used for covering the costs of water rights litigation. The per capita distribution was made, and the land acquired, but the water litigation was settled and there remains $900,000 in the interest account.

This legislation would permit the tribe, with the approval of the Secretary, to use that money for the benefit of the tribe.

Mr. Speaker, H.R. 5686 has broad bipartisan support. Congressmen AUCOIN and BEREUTER, in whose districts the Grand Ronde and Ponca Tribes reside, are cosponsors of this legislation. In addition, all of the tribes affected by

H.R. 5686 enthusiastically support it, as does the administration.

In closing, I would like to thank the chairman of the Interior Committee for agreeing to bring this legislation to the floor so expeditiously. Because of the extremely time-sensitive nature of section 2 of this bill, and because we have so few legislative days left this session, I trust that the other body will move as swiftly.

Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, this Member rises today in support of H.R. 5686, legislation to make technical amendments to certain Federal Indian statutes.

This Member would like to thank the distinguished gentleman from Arizona [Mr. RHODES] for introducing this bill that makes an important technical correction to Public Law 101-484.

This law reestablished Federal recognition for the Ponca Tribe of Nebraska. It also required the tribe to submit an economic development plan 2 years from the date of enactment, which would be October 31, 1992. Since no appropriations were provided to fund the Poncas' economic development plan in 1990, the tribe effectively only had 1 year of funding to develop a plan. This technical correction would allow the Ponca Tribe an additional year to complete the plan, thereby giving them the 2 fully funded years that clearly were originally intended by Congress.

An economic development plan is crucial to the success to tribal efforts and will greatly benefit each member of the Ponca Tribe, by providing increased economic opportunities for all involved.

Of course, the Ponca Tribe is very supportive of this change.

It is critical that this bill move quickly. The gentleman from Arizona [Mr. RHODES] introduced the legislation on July 23, and in less than 2 weeks it is being considered by the House. Once it is passed by the House, this Member would strongly hope that this time-sensitive legislation not languish in the other body. Also this Member extends his appreciation to them.

Mr. Speaker, this Member would like to urge his colleagues to support this legislation.

Mr. WILLIAMS. Mr. Speaker, I rise today in support of H.R. 5686, a bill to make technical amendments to certain Federal Indian statutes. There is a provision in this bill that I would like to bring to your attention. It allows the Crow Tribe of Montana to access and spend about $664,500 from trust fund accounts held by the Bureau of Indian Affairs for past judgment awards.

The Indian Justice Fund Distribution Act set up a system by which funds awarded to a tribe can be distributed. Up to 80 percent can be distributed on a per capita basis while the remaining funds must be used for the benefit of the entire tribe. The tribe must formulate a plan to spend the funds and reach agreement with the Secretary of the Interior. In the case of the Crow, their plans have been implemented with $664,500 left unspent. The unspent funds cannot be used for purposes outside of the plan and the original act provides no mechanism for additional planning. Therefore, this bill allows the Crow to formulate a second plan with the approval of the Secretary, to utilize the remaining funds.

The Crow Tribe wants to use part of its funds for an excellent and worthwhile effort, renovation of the Crow youth camp in the Bighorn Mountains for drug treatment and rehabilitation programs. Earlier this year, the University of Minnesota completed a study on native American youth. They found that the death rate for native American teenagers is twice that of adolescents of other racial and ethnic backgrounds. The study reasons that the high rates of mortality among youth related to suicide and motor vehicle crashes are no doubt associated with substance abuse. I think the Crow Tribe's plan to take care of their youth, and in turn the tribe's future, is commendable.

Funds would also be used to expand the existing Crow tribal offices. I wholeheartedly support this bill.

Mr. MARLENEE. Mr. Speaker, I rise today in support of the Indian technical amendments legislation, H.R. 5686. The Crow Tribe of Montana has requested, pursuant to current law, that Congress authorize the release of approximately $600,000 of funds belonging to the tribe that are currently held in the treasuries. This legislation would authorize the Secretary of the Interior to reprogram these funds consistent with purposes outlined in a 1991 Crow tribal resolution.

The tribe intends to use the funds to renovate the Crow youth camp in the Bighorn Mountains to house a drug treatment and rehabilitation program and to enhance the current tribal administration building.

I am particularly pleased with the tribe's ongoing commitment to the needs of its members, especially its youth, in the area of drug treatment and rehabilitation. That the tribe is spending its own funds, not appropriated funds of the BIA for this purpose, is especially significant. I look forward to a time when our Nation's Indian tribes will have the ability to make these funding choices on their own—and am encouraged by the priorities this resolution demonstrates of the Crow Tribe.

□ 1600

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and pass the bill, H.R. 5686, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO IRAQ—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 102-367)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, without objection, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of February 11, 1992, concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 of August 2, 1990. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1703(c).

Executive Order No. 12722 ordered the immediate blocking of all property and interests in property of the Government of Iraq (including the Central Bank of Iraq) then or thereafter located in the United States or within the possession or control of a U.S. person. In that order, I also prohibited the importation into the United States of goods and services of Iraqi origin, as well as the exportation of goods, services, and technology from the United States to Iraq. I prohibited travel-related transactions and transportation transactions to or from Iraq and the performance of any contract in support of any industrial, commercial, or governmental project in Iraq. U.S. persons were also prohibited from granting or extending credit or loans to the Government of Iraq.

The foregoing prohibitions (as well as the blocking of Government of Iraq property) were continued and augmented on August 9, 1990, by Executive Order No. 12724 which I issued in order to align the sanctions imposed by the United States with United Nations Security Council Resolution 661 of August 6, 1990.

This report discusses only matters concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 and matters relating to Executive Order No. 12724 ("the Executive orders"). The report covers events from February 2, 1992, through August 1, 1992.

1. The economic sanctions imposed on Iraq by the Executive orders are administered by the Treasury Department's Office of Foreign Assets Control ("FAC") under the Iraqi Sanctions

Regulations, 31 CFR part 575 ("ISR"). There have been no amendments of those regulations since my last report.

2. Investigations of possible violations of the Iraqi sanctions continue to be pursued and appropriate enforcement actions taken. These are intended to deter future activities in violation of the sanctions. Additional civil penalty notices were prepared during the reporting period for violations of the IEEPA and ISR with respect to transactions involving Iraq. Penalties were collected, principally from financial institutions which engaged in unauthorized, albeit apparently inadvertent, transactions with respect to Iraq.

3. Investigation also continues into the roles played by various individuals and firms outside of Iraq in Saddam Hussein's procurement network. These investigations may lead to additions to the FAC listing of individuals and organizations determined to be Specially Designated Nationals ("SDN's") of the Government of Iraq. In practice, an Iraqi SDN is a representative, agent, intermediary, or front (whether open or covert) of the Iraqi government that is located outside of Iraq. Iraqi SDN's are Saddam Hussein's principal instruments for doing business in third countries, and doing business with them is the same as doing business directly with the Government of Iraq.

The impact of being named an Iraqi SDN is considerable: all assets within U.S. jurisdiction of parties found to be Iraqi SDN's are blocked; all economic transactions with SDN's by U.S. persons are prohibited; and the SDN individual or organization is exposed as an agent of the Iraqi regime.

4. Since my last report, one case filed against the Government of Iraq has gone to judgment. *Centrifugal Casting Machine Co., Inc.* v. *American Bank and Trust Co., Banca Nazionale del Lavoro, Republic of Iraq, Machinery Trading Co., Baghdad, Iraq, Central Bank of Iraq, and Bank of Rafidain*, No. 91-5150 (10th Cir., decided June 11, 1992), arose out of a contract for the sale of goods by plaintiff to the State Machinery Co., an Iraqi governmental entity. In connection with the contract, the Iraqi defendants opened an irrevocable letter of credit in favor of Centrifugal, from which Centrifugal drew a 10 percent advance payment. Repayment of the advance payment in case of nonperformance by Centrifugal was guaranteed by a standby letter of credit. Performance did not occur due to the imposition of economic sanctions against Iraq in August 1990, and the United States claimed that an amount equal to the advance payment was blocked property. The district court ruled that the standby letter of credit had expired, that no U.S. party was liable to an Iraqi entity under the standby letter of credit, and that the advance payment funds were therefore not blocked property and could be distributed to U.S. persons. The court of appeals affirmed the ruling of the district court that there was no blocked Iraqi property interest in the advance payment funds, based on applicable principles of letter of credit law.

5. FAC has issued 288 specific licenses regarding transactions pertaining to Iraq or Iraqi assets. Since my last report, 71 specific licenses have been issued. Most of these licenses were issued for conducting procedural transactions such as filing of legal actions, and for legal representation; other licenses were issued pursuant to United Nations Security Council Resolutions 661, 666, and 687, to authorize the exportation to Iraq of donated medicine, medical supplies, and food intended for humanitarian relief purposes. All of these licenses concern minor transactions of no economic benefit to the Government of Iraq.

To ensure compliance with the terms of the licenses which have been issued, stringent reporting requirements have been imposed that are closely monitored. Licensed accounts are regularly audited by FAC compliance personnel and deputized auditors from other regulatory agencies. FAC compliance personnel continue to work closely with both State and Federal bank regulatory and law enforcement agencies in conducting special audits of Iraqi accounts subject to the ISR.

6. The expenses incurred by the Federal Government in the 6-month period from February 2, 1992, through August 1, 1992, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Iraq are estimated at $2,476,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in FAC, the U.S. Customs Service, the Office of the Assistant Secretary for Enforcement, the Office of the Assistant Secretary for International Affairs, and the Office of the General Counsel), the Department of State (particularly the Bureau of Economic and Business Affairs and the Office of the Legal Adviser), the Department of Transportation (particularly the U.S. Coast Guard), and the Department of Commerce (particularly in the Bureau of Export Administration and the Office of the General Counsel).

7. The United States imposed economic sanctions on Iraq in response to Iraq's invasion and illegal occupation of Kuwait, a clear act of brutal aggression. The United States, together with the international community, is maintaining economic sanctions against Iraq because the Iraqi regime has failed to comply fully with United Nations Security Council resolutions calling for the elimination of Iraqi weapons of mass destruction, the demarcation of the Iraq-Kuwait border, the release of Kuwaiti and other prisoners, compensation for victims of Iraqi aggression, and the return of Kuwaiti assets stolen during its illegal occupation of Kuwait. The U.N. sanctions remain in place; the United States will continue to enforce those sanctions.

The Saddam Hussein regime continues to violate basic human rights by repressing the Iraqi civilian population and depriving it of humanitarian assistance. The United Nations Security Council passed resolutions that permit Iraq to sell $1.6 billion of oil under U.N. auspices to fund the provision of food, medicine, and other humanitarian supplies to the people of Iraq. Under the U.N. resolutions, the equitable distribution within Iraq of this assistance would be supervised and monitored by the United Nations and other international organizations. The Iraqi regime continues to refuse to accept these resolutions, and has thereby chosen to perpetuate the suffering of its civilian population.

The regime of Saddam Hussein continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, as well as to regional peace and security. The United States will therefore continue to apply economic sanctions to deter Iraq from threatening peace and stability in the region, and I will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

GEORGE BUSH.

THE WHITE HOUSE, *August 3, 1992.*

MARINE MAMMAL HEALTH AND STRANDING RESPONSE ACT

Mr. CARPER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3486) to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and catastrophic events involving marine mammals, as amended.

The Clerk read as follows:

H.R. 3486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Health and Stranding Response Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years.

(2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events.

(3) An accurate assessment of marine mammal health, health trends in marine

mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live.

(4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events and may serve as an indicator of the general health of our coastal and marine environments.

(5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.

(6) Standardized methods for the reporting of dying, dead, or otherwise incapacitated marine mammals in the wild would greatly assist in the determination of the causes of marine mammal unusual mortality events and enhance general knowledge of marine mammal species.

(7) A formal system for collection, preparation, and archiving of, and providing access to, marine mammal tissues will enhance efforts to investigate the health of marine mammals and health trends of marine mammal populations, and to develop reference data.

(8) Information on marine mammals, including results of analyses of marine mammal tissues, should be broadly available to the scientific community, including stranding network participants, through a marine mammal data base.

SEC. 3. MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM.

(a) IN GENERAL.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following new title:

"TITLE III—MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

"SEC. 301. ESTABLISHMENT OF PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program, to be known as the 'Marine Mammal Health and Stranding Response Program'.

"(b) PURPOSES.—The purposes of the Program shall be to—

"(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

"(2) correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and

"(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 304.

"SEC. 302. DETERMINATION, DATA COLLECTION AND DISSEMINATION.

"(a) DETERMINATION FOR RELEASE.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

"(b) COLLECTION.—The Secretary shall, in consultation with the Secretary of the Interior, collect and update periodically existing information on—

"(1) procedures and practices for—

"(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

"(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

"(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

"(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

"(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

"(c) AVAILABILITY.—The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

"SEC. 303. STRANDING RESPONSE AGREEMENTS.

"(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) or section 112(c) in response to a stranding.

"(b) REQUIRED PROVISION.—An agreement under this subsection shall—

"(1) specify each person who is authorized to perform activities under the agreement; and

"(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

"(c) REVIEW.—The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

"SEC. 304. UNUSUAL MORTALITY EVENT RESPONSE.

"(a) RESPONSE.—

"(1) WORKING GROUP.—

"(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

"(i) determining whether an unusual mortality event is occurring;

"(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

"(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

"(B) The Federal Advisory Committee Act shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

"(2) RESPONSE TIMING.—The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

"(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

"(B) within 48 hours after receiving such notification—

"(i) make a determination as to whether an unusual mortality event is occurring;

"(ii) inform the stranding network participant of that determination; and

"(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

"(b) CONTINGENCY PLAN.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

"(2) CONTENTS.—The contingency plan required under this subsection shall include—

"(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

"(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

"(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

"(D) such requirements as are necessary to—

"(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

"(ii) assist in identifying the cause or causes of an unusual mortality event;

"(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

"(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

"(c) ONSITE COORDINATORS.—

"(1) DESIGNATION.—

"(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

"(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

"(C) If, because of wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

"(2) FUNCTIONS.—

"(A) an Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons respond-

ing to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that—

"(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

"(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

"(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

"SEC. 305. UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

"(a) ESTABLISHMENT OF FUND.—There is established in the Treasury a fund to be known as the 'Marine Mammal Unusual Mortality Event Fund', which shall consist of amounts deposited into the Fund under subsection (c).

"(b) USES.—

"(1) IN GENERAL.—Amounts in the Fund—

"(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

"(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 304(b) or under the direction of an Onsite Coordinator for an unusual mortality event; and

"(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

"(B) shall remain available until expended.

"(2) PENDING CLAIMS.—If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

"(c) DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

"(1) amounts appropriated to the Fund;

"(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

"(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

"(d) ACCEPTANCE OF DONATIONS.—For purposes of carrying out this title, the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

"SEC. 306. LIABILITY.

"(a) IN GENERAL.—A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

"(1) in accordance with that agreement; and

"(2) in the case of an unusual mortality event, in accordance with—

"(A) the contingency plan issued under section 304(b);

"(B) the instructions of an Onsite Coordinator designated under section 304(c); or

"(C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

"(b) LIMITATION.—Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

"SEC. 307. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

"(a) TISSUE BANK.—

"(1) IN GENERAL.—The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the 'National Marine Mammal Tissue Bank'.

"(2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING.—The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

"(A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

"(B) documentation of procedures used for collecting, preparing, and archiving those samples.

"(3) SOURCE OF TISSUE.—In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources, in the wild including—

"(A) incidental takes of marine mammals;

"(B) subsistence-caught marine mammals;

"(C) biopsy samples; and

"(D) any other samples properly collected.

"(b) TISSUE ANALYSIS.—The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for monitoring and measuring, by use of the most effective and advanced diagnostic technologies and tools practicable overall health trends in representative species or populations of marine mammals, including—

"(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and

"(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

"(c) DATA BASE.—

"(1) IN GENERAL.—The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

"(2) CONTENTS.—The data base established under this subsection shall include—

"(A) reference data on the health of marine mammals and populations of marine mammals; and

"(B) data on species of marine mammals that are subject to unusual mortality events.

"(d) ACCESS.—The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

"(1) marine mammal tissues in the Tissue Bank;

"(2) analyses conducted pursuant to subsection (b); and

"(3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

"SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated—

"(1) to the Secretary for carrying out this title (other than sections 305 and 307) $250,000 for each of fiscal years 1993 and 1994;

"(2) to the Secretary for carrying out section 307, $250,000 for each of fiscal years 1993 and 1994; and

"(3) to the Fund, $500,000 for fiscal year 1993.".

(b) IMPLEMENTATION.—The Secretary of Commerce shall—

(1) in accordance with section 302(a) and 302(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, and not later than 24 months after the date of enactment of this Act—

(A) develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild; and

(B) collect and make available information on marine mammal health and health trends;

(2) in accordance with section 304(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, issue a detailed contingency plan for responding to any unusual mortality event—

(A) in proposed form by not later than 18 months after the date of enactment of this Act; and

(B) in final form by not later than 24 months after the date of enactment of this Act.

SEC. 4. CONFORMING AMENDMENTS.

The Marine Mammal Protection Act of 1972 is amended—

(1) in section 102(a) (16 U.S.C. 1372(a)) by inserting "or title III" after "this title";

(2) in section 109(h)(1) (16 U.S.C. 1379(h)(1)) by inserting "or title III" after "this title"; and

(3) in section 112(c) (16 U.S.C. 1382(c)) by inserting "or title III" after "this title".

SEC. 5. DEFINITIONS.

Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended—

(1) in paragraph (11)—

(A) by striking "The term" and inserting "(A) Except as provided in subparagraph (B), the term";

(B) by redesignating subparagraph (A) as clause (i);

(C) by redesignating subparagraph (B) as clause (ii); and

(D) by adding at the end the following:

"(B) In title III, the term 'Secretary' means the Secretary of Commerce."; and

(2) by adding at the end the following:

"(15) The term 'Fund' means the Marine Mammal Unusual Mortality Event Fund established by section 305(a).

"(16) The term 'Office' means the Office of Protected Resources, in the National Marine Fisheries Service.

"(17) The term 'stranding' means an event in the wild in which—

"(A) a marine mammal is dead and—

"(i) is on a beach or shore of the United States, or

"(ii) is in waters under the jurisdiction of the United States (including any navigable waters); or

"(B) a marine mammal is alive and is—

"(i) on a beach or shore of the United States and unable to return to the water;

"(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

"(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its

natural habitat under its own power or without assistance.

"(18) The term 'stranding network participant' means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

"(19) The term 'Tissue Bank' means the National Marine Mammal Tissue Bank provided for under section 307(a).

"(20) The term 'unusual mortality event' means a stranding that—

"(A) is unexpected;

"(B) involves a significant die-off of any marine mammal population; and

"(C) that demands immediate response.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Delaware [Mr. CARPER] will be recognized for 20 minutes, and the gentleman from New Jersey [Mr. SAXTON] will be recognized for 20 minutes.

The Chairman recognizes the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Speaker, I yield myself such time as I many consume.

Mr. Speaker, I rise in strong support of H.R. 3486, the Marine Mammal Health and Stranding Response act.

This legislation represents a carefully crafted response to a problem that plagues our shores, and the shores of many other coastal countries: the often inexplicable stranding and death of large numbers of dolphins, whales and other marine mammals. The final straw prompting the development of this bill was the massive die-off of bottlenosed dolphins along the atlantic coast during 1987–88 in which up to half of the coastal population of bottlenosed dolphins perished. Most disturbing was our inability to say with any certainty why the deaths occurred. Granted, causes of these events may be difficult to determine under any circumstances, but this country was grossly unprepared to respond to the event. Thus, we didn't even have a fighting chance to collect the data needed to get to the root cause.

This bill would give us the tools we need to monitor the health of our coastal marine mammals, and to respond quickly when these unusual mortality events occur. The bill creates, through a newly created national marine mammal tissue bank, a systematic process for collecting, preserving, and storing tissues from healthy and stranded marine mammals so that analyses and comparisons can be made. Comparisons of healthy and stranded animals will provide clues to the interplay between the marine environment, coastal pollution, and marine mammal health, and help us determine why these animals sometimes die in such large numbers.

The bill also establishes a quick response program for unusual strandings and die-offs. This program will ensure that sufficient personnel and resources are focused on such events pursuant to a well conceived contingency plan. In the past, the Federal response has generally been ad hoc, underfunded, and too slow to gather the quality information needed to determine the causes and effects of these events. Future responses, under this bill, will be prompt, organized, and adequately funded.

And to ensure that knowledge gained from tissue analyses and other activities related to marine mammals is broadly available to the scientific community, the bill establishes a data base with information on marine mammal health and strandings, results of tissue analyses, and other relevant details.

Under this bill, this Nation will—for the first time—have the tools it needs to monitor the health of marine mammals. With this program in place, we will also have in place a sensitive barometer of the impact of human activities on our coastal environment.

Mr. Speaker, this legislation is the product of several years of discussion with virtually every interested group. That cooperative effort has resulted in a product that—as far as I know—has generated no opposition.

Mr. Speaker, we have a good bill here. I urge my colleagues to support it.

□ 1610

Mr. Speaker, I reserve the balance of my time.

Mr. SAXTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I rise in support of H.R. 3486, the Marine Mammal Health and Stranding Response Act.

Briefly, this bill will establish a contingency program and fund for responding to unusual mortality events—such as the mass die-off in 1987–88 in which half of the Atlantic stock of bottlenosed dolphin perished.

In addition, the bill provides for the collection and analysis of reference tissues of marine mammals migrating along various regions of our Nation's coastlines. This is to address the present lack of knowledge we have regarding the normal health trends of these species.

Although increasingly high counts of contaminants are found in the tissues of dead and stranded marine mammals, we have nothing to reference in determining whether this is normal. Clearly, we need to know if these mammals are telling us something about the condition of their environment.

The bill also provides for the coordination of existing facilities to archive marine mammal tissues and analyses into a data bank that can be accessed by researchers and stranding network participants for comparative study.

Lastly, the bill promulgates guidelines to stranding networks regarding what tissue samples to collect, how to prepare them, how to ensure their integrity, and where to send them for documentation and storage.

The 1987–88 die-off and subsequent die-offs in the gulf have revealed a total lack of preparation for responding to these disturbing events. Federal agencies are left scrambling for funds, collected tissues are often mishandled or lost, and data regarding the health trends of these creatures, as they correspond to the health of our coastal environment, is largely nonexistent.

Although the issue of marine mammals and the causes of their strandings and deaths are not a burning issue on the national agenda at this time, no one knows when a massive die-off might occur again—anywhere.

These massive die-offs are increasing in size and frequency along our Nation's coastline and around the world. Whether it is a natural phenomenon or whether it is in response to the changing condition of our oceans are questions about which we remain uncertain.

H.R. 3486 establishes the critical framework needed for providing the answers to the disturbing questions being raised by these marine creatures.

I want to give a special thanks to staff—Dr. Leslie Dierauf and Ron Moore, and to the Center for Marine Conservation, all of whom contributed a great deal of expertise to the final drafting of this measure.

This bill was unanimously supported by the committee and has the full support of the administration and the marine mammal groups who are on the front lines responding to these tragic events.

I urge my colleagues to support passage of H.R. 3486 today.

Mr. Speaker, I reserve the balance of my time.

Mr. CARPER. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 3486, the Marine Mammal Health and Stranding Response Act. I'd like to thank the chairmen of the subcommittee, Mr. STUDDS, and the full committee, Mr. JONES, for moving this very important initiative forward. Indeed, this legislation is necessary to address the problems and dearth of information associated with marine mammal strandings and unusual mortality events.

I also want to commend my colleagues, Mr. CARPER, and Mr. SAXTON, for their leadership on this issue. This bill is a culmination of many long hours spent in discussion with members of the committee, the Marine Mammal Commission, the conservation and scientific communities, and the members of the marine mammal stranding network. This bill represents a good compromise between all interested parties.

Soon after dead and dying dolphins began washing up along the Atlantic Coast in 1987 and 1988, it was clear that our national response was disorganized and ineffective. Indeed, our inability to find the cause or solution to this un-

usual event in which hundreds of marine mammals perished was a source of tremendous frustration.

Further, this event highlighted the shortcomings in our knowledge about these mammals and the cause of the dolphin deaths that were occurring in such epidemic proportions. Extensive studies conducted to determine the cause of the mortality raised more questions than they answered and to this day, we do not know the cause of the massive die-off.

This legislation, which establishes programs for responding to marine mammal disasters and assessing the state of marine mammal health, therefore, is a major step forward. Under this bill, information on the rescue and rehabilitation of marine mammals would be compiled, centralized, updated, and made available to scientific researchers and members of the marine mammal stranding network to help in assessing the causes of strandings and unusual mortality events.

This legislation sets up guidelines and standardizes collection, preservation, labeling, transport, and archiving of marine mammal tissue samples which will be essential to establish baseline data that can be used in assessing health trends of marine mammals and making determinations of marine mammal health and the causes of mortality.

Finally, the bill sets up a contingency plan so that response to strandings and unusual mortality events will be timely and coordinated and designed to gather the information necessary to determine the causes and effects of these events.

This legislation will help marine mammal stranding response centers and volunteers throughout the Nation. Indeed, I am very proud of the marine mammal stranding response center in New Jersey. They do excellent work and this legislation will help them increase their effectiveness.

Mr. Speaker, it is important that we support marine mammal research and pursue investigations of strandings and unusual mortality events. Just as importantly, we need to develop better baseline data so that we might better assess the condition of our oceans. Only then may we be able to answer many of the unknowns that still exist and, if possible, prevent a recurrence of the dolphin tragedy.

H.R. 3486 and the substitute amendment is a major step in this direction. The bill provides the Nation with the essential tools for monitoring the health of marine mammals and establishes programs which will act as a barometer of the impact of human activities on our coastal environment. This is a rational bill and I urge my colleagues' strong support for its passage.

Mr. SAXTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to point out that this bill is the result of a great deal of hard work by Members of both parties, and it goes to show, I believe, what can be accomplished when we Republicans and Democrats work together on problems that we all have in common.

I would like to again commend the leadership on the other side, particularly my colleague, the gentleman from New Jersey [Mr. HUGHES], for the very strong advocacy role he played in this.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CARPER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me just echo what the gentleman from New Jersey [Mr. SAXTON] has said. In the Committee on Merchant Marine and Fisheries, we do not give as much thought or time to partisan labels as we do toward getting things done. The legislation that I think is before us today is another piece of evidence that that, indeed, continues to be the case.

To the gentleman from New Jersey [Mr. SAXTON], who is an architect of this bill, to the gentleman from New Jersey [Mr. HUGHES], and the gentleman from Massachusetts [Mr. STUDDS], whose support in drafting has been very helpful, I want to say thank you, as well as to the members of our respective staffs for their assistance.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 3486, the Marine Mammal Health and Stranding Response Act.

Marine mammals have beached or stranded themselves on every coast of the United States. The response to these strandings—carried out primarily by volunteers—has been admirable, but in many cases uncoordinated.

H.R. 3486 would formalize a nationwide coordinated response system for marine mammal strandings and help fund those responses. The bill also provides for the establishment of a national marine mammal tissue bank. It is our committee's hope that scientific evaluation of the tissues taken from these stranded animals will provide a window into the health of not only marine mamals, but our oceans themselves.

I congratulate my colleagues, Mr. CARPER, Mr. STUDDS, and Mr. SAXTON for their bipartisan efforts on behalf of this most worthy of causes.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 3486 and urge its adoption.

Mr. Speaker, this bill is designed to provide a formal mechanism for dealing with marine mammals that are unexpectedly stranded on our shores. It also provides funding for a very modest tissue bank program, so that scientists can determine the quality of our ocean waters. This is a bipartisan measure which was reported unanimously by our committee.

Mr. Speaker, I also want to note that during committee markup, my colleagues lavished a great deal of praise on the majority staff for work they did on the bill. I want to point out that two members of minority staff of this committee, Mr. Rod Moore and Ms. Laurel Bryant, spent a great deal of time making sure this bill was put together in an acceptable form. Since this was a bipartisan effort, I think a praise should be given to staff on both sides of the aisle.

Mr. Speaker, I support this bill and its passage by the House.

Mr. CARPER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Delaware [Mr. CARPER] that the House suspend the rules and pass the bill, H.R. 3486, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and unusual mortality events involving marine mammals.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CARPER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3486, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Delaware?

There was no objection.

ABANDONED BARGE ACT OF 1992

Mr. TAUZIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5397) to amend title 46, United States Code, to prohibit abandonment of barges, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5397

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Barge Act of 1992".

SEC. 2. ABANDONMENT OF BARGES.

(a) IN GENERAL.—Part B of subtitle II of title 46, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 47—ABANDONMENT OF BARGES

"Sec.
"4701. Definitions.
"4702. Abandonment of barge prohibited.
"4703. Penalty for unlawful abandonment of barge.
"4704. Removal of abandoned barges.
"4705. Liability of barge removal contractors.

"§ 4701. Definitions

"In this chapter—

"(1) 'abandon' means to moor, strand, wreck, sink, or leave a barge of more than

100 gross tons unattended for longer than forty-five days.

"(2) 'barge removal contractor' means a person that enters into a contract with the United States to remove an abandoned barge under this chapter.

"(3) 'navigable waters of the United States' means waters of the United States, including the territorial sea.

"(4) 'removal' or 'remove' means relocation, sale, scrapping, or other method of disposal.

"§ 4702. Abandonment of barge prohibited

"(a) An owner or operator of a barge may not abandon it on the navigable waters of the United States. A barge is deemed not to be abandoned if—

"(1) it is located at a Federally- or State-approved mooring area;

"(2) it is on private property with the permission of the owner of the property; or

"(3) the owner or operator notifies the Secretary that the barge is not abandoned and the location of the barge."

"§ 4703. Penalty for unlawful abandonment of barge

"Thirty days after the notification procedures under section 4704(a)(1) are completed, the Secretary may assess a civil penalty of not more than $1,000 for each day of the violation against an owner or operator that violates section 4702. A vessel with respect to which a penalty is assessed under this chapter is liable in rem for the penalty.

"§ 4704. Removal of abandoned barges

"(a) AUTHORITY TO REMOVE.—

"(1) IN GENERAL.—The Secretary may remove a barge that is abandoned after complying with the following procedures:

"(A) If the identity of the owner or operator can be determined, the Secretary shall notify the owner or operator by certified mail—

"(i) that if the barge is not removed it will be removed at the owners' or operators' expense; and

"(ii) of the penalty under section 4703.

"(B) If the identity of the owner or operator cannot be determined, the Secretary shall publish an announcement in—

"(i) a notice to mariners; and

"(ii) an official journal of the county in which the barge is located

that if the barge is not removed it will be removed at the owners' or operators' expense.

"(2) UNITED STATES NOT LIABLE.—The United States and any officer or employee of the United States is not liable to an owner or operator for damages resulting from removal of an abandoned barge under this chapter.

"(b) LIABILITY OF OWNER AND OPERATOR.—The owner or operator of an abandoned barge is liable, and an abandoned barge is liable in rem, for all expenses that the United States incurs in removing an abandoned barge under this chapter.

"(c) REMOVAL SERVICES.—

"(1) SOLICITATION.—The Secretary may, after providing notice under subsection (a)(1), solicit by public advertisement sealed bids for the removal of an abandoned barge.

"(2) CONTRACT.—After solicitation under paragraph (1) the Secretary may award a contract. The contract—

"(A) may be subject to the condition that the barge and all property on the barge is the property of the barge removal contractor; and

"(B) must require the barge removal contractor to submit to the Secretary a plan for the removal.

"(3) COMMENCEMENT OF REMOVAL.—Removal of an abandoned barge may begin thirty days after the Secretary completes the procedures under subsection (a)(1).

"§ 4705. Liability of barge removal contractors

"(a) LIABILITY.—

"(1) IN GENERAL.—A barge removal contractor and its subcontractor are not liable for damages that result from actions taken or omitted to be taken in the course of removing a barge under this chapter.

"(2) EXCEPTIONS.—Subparagraph (1) does not apply—

"(A) with respect to personal injury or wrongful death; or

"(B) if the contractor or subcontractor is grossly negligent or engages in willful misconduct.".

(b) APPLICATION TO CERTAIN BARGES.—One year after the date of enactment of this Act, the Secretary may assess a civil penalty under section 4703 against an owner or operator of a barge abandoned before June 11, 1992.

SEC. 3. CLERICAL AMENDMENT.

The analysis of subtitle II at the beginning of title 46, United States Code, is amended by inserting after the item relating to chapter 45 the following:

"47. Abandonment of barges ..... 4701".

SEC. 4. NUMBERING OF BARGES.

Section 12301 of title 46, United States Code, is amended—

(1) by inserting "(a)" before "An undocumented vessel"; and

(2) by adding at the end the following:

"(b) The Secretary shall require an undocumented barge of more than 100 gross tons operating on the navigable waters of the United States to be numbered.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Louisiana [Mr. TAUZIN] will be recognized for 20 minutes, and the gentleman from Texas [Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to ask my colleagues to support H.R. 5397, the Abandoned Barge Act of 1992. I introduced this bill along with Chairman JONES and Congressman JACK FIELDS to protect our Nation's waterways from the environmental problems resulting from abandoned barges. I chair the Subcommittee on Coast Guard and Navigation, which has held hearings on this issue. We have learned that abandoned barges create a significant source of water pollution on our inland waterways.

At the outset of the subcommittee's investigation, I was amazed to learn that abandoning a barge is not a violation of law. As long as a barge does not pose a threat to navigation, it can legally remain moored on a river bank or stranded in a marsh. An abandoned barge would seem to be nothing more than an eyesore to those of us who enjoy recreation on our waterways. But to those criminals who profit by illegally disposing of chemical and petroleum wastes, an abandoned barge is an easy and efficient repository for toxic dumping.

The primary purpose of H.R. 5397 is to prevent future marine pollution from abandoned barges. Last year the Subcommittee on Coast Guard and Navigation asked the General Accounting Office [GAO] to investigate the problems associated with abandoned vessels. On July 21, 1992, the GAO submitted their report to the Committee on Merchant Marine and Fisheries.

The GAO estimates there are between 600 and 1,200 abandoned barges along our Nation's waterways. Since 1988, the Federal Government has spent almost $6 million to clean up pollutants from 51 abandoned vessels. In only a few of these cases did the owners pay for the cleanup costs. The taxpayers paid for the rest.

In 1988, the Federal Government spent $845,600 to remove 210,000 gallons of waste material from two abandoned tank barges in Empire, LA. Following the cleanup, the tank barges were locked shut. The barges remained abandoned in an unused canal. In 1991 the site was revisited and it was discovered that the barges had been broken into. Midnight dumpers had used the barges to dispose of almost 600,000 gallons of waste chemicals. This time the Federal Government spent $1.7 million to clean and remove the barges.

We drafted the Abandoned Barge Act to correct this environmentally dangerous and unfair loophole in current law.

H.R. 5397:

First, makes abandoning a barge in the Nation's waterways illegal.

Second, establishes a new penalty which we hope will deter those who would abandon a barge on our waterways.

Third, requires that all barges be numbered and thus allows the Coast Guard to better identify the person responsible for the barge, and

Fourth, gives the Coast Guard discretionary authority to contract for the removal of the barge at the owner or operator's cost.

There are existing abandoned barges which will need removal at some point in time. Those that pose the greatest current threat to the environment by containing either oil or hazardous material can be disposed of with funds available under the oil pollution trust fund or the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA]. We may at some point in the future need to determine whether funding will be needed to remove those that may be potential targets of midnight dumpers, but which are not a current threat.

H.R. 5347 is the result of a bipartisan effort by the Subcommittee on Coast Guard and Navigation. It is also the product of a great deal of hard work and cooperation between the General Accounting Office, the Coast Guard and the American waterways operators. I am hopeful that H.R. 5397 will send a signal to those who wish to use our waters as a cheap and easy place for dis-

posal so that this practice will no longer be tolerated. I also want to encourage the industry to seek innovative methods of disposing of barges which are no longer usable. Just as the oil industry has found an environmentally beneficial use for outdated oil rigs in the rigs to reefs program, there may be a beneficial use for these vessels or the metal contained in them. I know that the responsible barge operators share my concern for protecting our waterways from pollution and will continue to work with our subcommittee as cooperatively as they have in the past.

I urge my colleagues to join with me to support H.R. 5397 which will provide needed protection to our Nation's waterways.

□ 1620

Mr. FIELDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a cosponsor of H.R. 5397, I rise in strong support of this legislation and compliment my distinguished subcommittee chairman, BILLY TAUZIN, for his outstanding leadership in moving this important environmental protection bill.

H.R. 5397 is a product of 2 years of careful consideration by the Coast Guard and Navigation Subcommittee. Our subcommittee conducted two extensive oversight hearings on this issue and we commissioned the General Accounting Office to undertake a study to determine how many vessels had been abandoned, the extent of the environmental damage they have caused, and whether U.S. laws adequately addressed the problem of abandoned barges.

According to the General Accounting Office, there are some 600 abandoned barges in the United States, with the majority of them located in the Gulf of Mexico. In fact, there are at least three abandoned barges in my own congressional district which have been abandoned along the Houston ship channel.

These barges are navigational hazards and some have become convenient disposal sites for the dumping of hazardous materials which are polluting our waterways.

In 1989, the Coast Guard discovered that two abandoned tank barges in Empire, LA, had leaked 1,000 gallons of illegally dumped waste oil into the Mississippi River. Since the owners of these vessels were either deceased or bankrupt, the Coast Guard cleaned up the waste material at a cost of $835,000. Regrettably, however, the Coast Guard chose not to remove or destroy these tank barges.

This was a tragic mistake because on a subsequent visit to the site, the Coast Guard found that illegal dumping had resumed and these barges now contained 571,200 gallons of hazardous material. Using its Superfund authority, Coast Guard contractors removed this waste at an estimated cost of $1.7 million.

While the Empire barge incident may be the most famous, the Coast Guard has investigated dozens of other abandoned barges that have been used as illegal dump sites.

Mr. Speaker, this is a practice that must be stopped and H.R. 5397, introduced by the gentleman from Louisiana, is the right solution to this problem.

Under current law, incredibly, it is not unlawful to abandon a barge and there is no identification system for the thousands of undocumented barges. It is, therefore, difficult, if not impossible, for the Coast Guard to locate the owners of these vessels.

Mr. Speaker, H.R. 5397 will make it illegal to abandon a barge, will authorize the Coast Guard to remove them, will establish civil penalties for abandoning a barge, and will require all barges of 100 gross tons to be numbered. In this way, the Coast Guard will be able to find the rightful owners and to assess removal or cleanup costs for any environmental damage they may have caused.

Furthermore, this bill will send a clear signal to the U.S. Coast Guard that we believe they should remove abandoned barges before, and not after, they pollute our waterways.

Mr. Speaker, I am very pleased that we are considering this important bill and my good friend from Louisiana, Mr. TAUZIN, deserves tremendous credit for leading this timely effort to protect our coastal environment.

This is an excellent bill and I urge my colleagues to vote "aye" on H.R. 5397.

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply want to add my congratulations and thanks to the gentleman from Texas [Mr. FIELDS], the ranking minority member, proving again that our subcommittee does work in an extraordinary bipartisan manner. If there is gridlock around here, it does not happen on our subcommittee. We work and try to get things done. This is a good thing that needs to get done, and I urge my colleagues to finally approve it.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 5397, the Abandoned Barge Act of 1992.

For many years, Congress has worked to establish a comprehensive strategy to address maritime oilspills. The Oil Pollution Act of 1990 [OPA '90] was the fruit of that effort. H.R. 5397 addresses an environmental threat from barges that was not adequately addressed by OPA '90 and other environmental laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act, better known as CERCLA or Superfund.

Barges abandoned along this Nation's waterways are a blight on the environment, endangering both human and marine life. Our committee, through field hearings in Louisiana, has seen firsthand the problems created by these barges. We were shocked to learn that current law does not prohibit an owner or operator from abandoning a barge, unless the barge presents a hazard to navigation or creates a clear environmental hazard under OPA '90 or CERCLA.

Barges, as they reach the end of their economic life, present a dilemma for owners. The scrap value of these vessels is minimal and the cost of cleaning them, particularly those used to transport oil and chemicals, is astronomical. For example, two barges abandoned near New Orleans yielded about 260 tons of scrap steel, which had a value of $2,900, but cost over $300,000 for cleanup, removal, and disposal.

As a result, many owners take the irresponsible approach of abandoning these vessels along our waterways. Federal authorities cannot remove the barge unless it is a hazard to navigation or creates a clear and immediate environmental hazard.

However, these abandoned barges can pose a danger to human and marine life. Unscrupulous individuals have found these barges to be convenient receptacles for illegal dumping of oil or hazardous wastes, which often spill into and pollute our waterways. The committee has learned that even after cleaning and removal of hazardous materials by Federal agencies, illegal dumpers have broken into locked barges and refilled them with hazardous materials, thereby requiring further cleanup expenditures.

Starting over a year ago, the General Accounting Office [GAO], at the request, began an extensive study of the abandoned barge problem.

The GAO study found:

Federal laws do not specifically prohibit vessel abandonment;

As a result, at least 1,300 vessels are abandoned in waterways throughout the Nation;

These vessels pollute the marine environment and pose a continual pollution threat;

Abandoned vessels cost millions to clean up and remove; and

Vessel owners are not being held accountable for damages.

GAO advised Congress to enact legislation, first, to make it illegal to abandon barges, second, to provide appropriate administrative fines and penalties to deter abandonment, and third, to require permanent registration and marking of all barges.

To give a sense of the magnitude of this problem it should be noted that the Army Corps of Engineers estimates that 1,201 abandoned barges now clog our waterways.

Since 1988, the Coast Guard has investigated over 100 incidents of potential pollution from abandoned vessels. The cleanup costs associated with these investigations reached almost $6 million. Approximately 40 percent of this has been spent on abandoned barges alone.

To make matters even worse, little of the cleanup expenses have been recovered from the barge owners or operators responsible for the abandonment and resultant pollution. Because barges are exempt from current identification and documentation requirements, it is often impossible to determine the owner or operator of an abandoned barge.

It is high time to give the Federal agencies the authority to remove these barges before they become environmental nightmares, and the ability to track down the persons responsible for this environmental disgrace.

H.R. 5397 would end these problems by—

Prohibiting owners and operators from abandoning a barge;

Authorizing the Coast Guard to remove these environmental eyesores;

Allowing the Coast Guard to recover removal costs from the owners or operators of abandoned barges; and

Requiring the numbering of barges so Federal agencies will be able to identify individuals who illegally abandon a barge.

H.R. 5397 is an appropriate response to the findings of GAO and the Committee on Merchant Marine and Fisheries. It fills gaps in the current regime established by OPA '90 and CERCLA. The Coast Guard, using the tools in H.R. 5397, will be better able to safeguard the environment and hold those who damage it financially responsible. This bill is a necessary addition to the arsenal of weapons essential to defending the marine environment.

I commend Mr. TAUZIN for developing this important legislation and urge its adoption.

Mr. FIELDS. Mr. Speaker, I yield back the balance of my time.

Mr. TAUZIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Louisiana [Mr. TAUZIN] that the House suspend the rules and pass the bill, H.R. 5397, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

THE GREAT LAKES FISH AND WILDLIFE TISSUE BANK ACT

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5350) to establish the Great Lakes fish and wildlife tissue bank, as amended.

The Clerk read as follows:

H.R. 5350

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 101. SHORT TITLE.

This Act may be cited as "The Great Lakes Fish and Wildlife Tissue Bank Act".

SEC. 102. TISSUE BANK.

(a) IN GENERAL.—The Secretary shall coordinate existing facilities for the storage, preparation, examination, and archiving of tissues from selected Great Lakes fish and wildlife, which shall be known as the 'Great Lakes Fish and Wildlife Tissue Bank'.

(b) GUIDANCE.—The Secretary shall, in consultation with appropriate Federal and State agencies and the Council of Great Lakes Research Managers, issue guidance, after an opportunity for public review and comment, for Great Lakes fish and wildlife tissue collection, preparation, archiving, quality control procedures, and access that will ensure—

(1) appropriate uniform methods and standards for those activities to provide confidence in Great Lakes fish and wildlife tissue samples used for research;

(2) documentation of procedures used for collecting, preparing, and archiving those samples; and

(3) appropriate scientific use of the tissues in the Great Lakes Fish and Wildlife Tissue Bank.

SEC. 103. DATA BASE.

(a) MAINTENANCE.—The Secretary shall maintain a central data base which provides an effective means for tracking and assessing relevant reference data on Great Lakes fish and wildlife, including data on tissues collected for and maintained in the Great Lakes Fish and Wildlife Tissue Bank.

(b) ACCESS.—The Secretary shall establish criteria, after an opportunity for public review and comment, for access to the data base which provides for appropriate use of the information by the public.

SEC. 104. DEFINITIONS.

In this Act—

(1) "Secretary" means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(2) "Great Lakes fish and wildlife" means fauna, fish, and invertebrates dependent on Great Lakes resources, and located within the Great Lakes Basin.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary, $250,000 for each of fiscal years 1993 and 1994 to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5350. The Great Lakes, like many of our fragile marine environments, have suffered over the years from our human tendency to view these areas as limitless dumping grounds. Thanks to the efforts of my colleagues who represent the various States bordering the Great Lakes, that view is changing.

This bill will help scientists to monitor the general health trends of the wildlife that depend on the Great Lakes ecosystem for survival, and I urge my colleagues to support it.

□ 1630

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Great Lakes Fish and Wildlife Tissue Bank Act and urge its adoption.

This bill, authorized by Congressman BOB DAVIS, directs the Secretary of the Interior to coordinate existing facilities for handling selected Great Lakes fish and wildlife tissues. The Secretary must also issue guidance for tissue collection, establish criteria for access to the bank, and maintain a data base for tracking data on Great Lakes tissues.

This bill can greatly aid our work in cleaning up the Great Lakes. Coordination of facilities and development of uniform collection and storage standards will also make this information more valuable to users and save time and money.

I urge support for the measure and commend our ranking minority member for his leadership in protecting the Great Lakes.

Mr. Speaker, I urge adoption of the bill.

Mr. DAVIS. Mr. Speaker, I appreciate the cooperation of Chairmen STUDDS, JONES, and HERTEL in supporting this legislation and moving it through committee.

This bill authorizes the Fish and Wildlife Service to coordinate existing facilities to create a Great Lakes Tissue Bank for specimens of fish, wildlife, and even zebra mussels. The bill also authorizes the establishment of a centralized data base for information collected on Great Lakes fish and wildlife to give resource managers one-stop shopping.

The need for a centralized tissue bank in the Great Lakes has been recognized for a decade. The International Joint Commission recommended its creation in 1983, and the need was echoed in 1986, when the Council of Great Lakes Governors signed a toxic pollutant control agreement. More recently, the idea was promoted by the Northeast-Midwest Institute.

Specimen banking is needed to help monitor the environmental health of the lakes, as well as judge the effectiveness of our cleanup and control methods. Current tissue collection and storage methods are haphazard, and no central depository of information about Great Lakes tissues exist. The few banking efforts are uncoordinated, underfunded, and understaffed.

Mr. HERTEL. Mr. Speaker, H.R. 5350, the Great Lakes Wildlife Tissue Bank Act was introduced by Mr. DAVIS on June 9, 1992. I cosponsored this bill along with Mr. NOWAK, Mr. OBERSTAR, Ms. KAPTUR, Mr. BONIOR, Mr. VISCLOSKY, Mr. LAFALCE, Mr. PEASE, and Mr. LIPINSKI. The bill requires that the U.S. Fish and Wildlife Service take steps to provide for the storage, preparation, examination and archiving of Great Lakes wildlife, fish, and invertebrate tissues. H.R. 5350 also requires the establishment of uniform guidance on methods for collection, preparation, analysis, archiving, and quality control, while establishing a data base for tracking and evaluating information on Great Lakes animal tissue.

On April 8, 1992, the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf held an oversight hearing on Great Lakes Federal research efforts. H.R. 5350 was one outcome of the findings of that hearing. The bill was referred to the Subcommittee on Fisheries and Wildlife Conservation and the Environment which discharged it on July 1, 1992, prior to the bill's markup by the Merchant Marine and Fisheries Committee. I would like to thank Chairman STUDDS for discharging the bill, allowing its subsequent unanimous approval by the committee. This is a valuable contribution to our ongoing effort to manage and protect our Great Lakes.

In 1983, a report by the Science Advisory Board of the United States-Canada International Joint Commission advocated estab-

lishment of a tissue bank as a means of monitoring toxic contaminants in Great Lakes fish and wildlife.

Over 400 man-made contaminants have been identified in Great Lakes fish and wildlife. Unfortunately, we don't have the analytical capabilities, or the resources to keep a running record of the amount of each of these substances existing in Great Lakes fish and wildlife. Moreover, contaminant analysis is very expensive—in some cases, the analysis of a single sample can cost from $1,000 to $2,000.

The establishment of a Great Lakes tissue bank is a cost-saving solution to this dilemma because it will provide for long-term storage of tissue samples that could be analyzed for a suspect contaminant should trouble arise. For example, 10 years into the future, if Great Lakes scientists suspect that a particular compound might be threatening ecosystem health, they could carry out an analysis of tissue bank samples and determine how concentrations of that compound had changed over that 10-year period. Such knowledge is essential for gaining the scientific understanding we need to effectively manage and protect our Nation's vast Great Lakes resources.

I urge passage of H.R. 5350.

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. STUDDS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the House suspend the rules and pass the bill, H.R. 5350, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NATIONAL MARINE SANCTUARIES REAUTHORIZATION AND IMPROVEMENT ACT OF 1992

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4310) to reauthorize and improve the national marine sanctuaries program, and to establish the Coastal and Ocean Sanctuary Foundation, as amended.

The Clerk read as follows:

H.R. 4310

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—REAUTHORIZATION AND AMENDMENT OF TITLE III OF MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

SEC. 1. SHORT TITLE.

This title may be cited as the "National Marine Sanctuaries Reauthorization and Improvement Act of 1992".

SEC. 2. FINDINGS, PURPOSES, AND POLICIES.

(a) FINDINGS.—Section 301(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431) is amended—

(1) in paragraph (2)—

(A) by inserting "cultural," after "educational,"; and

(B) by inserting ", and in some cases international," after "national";

(2) in paragraph (4)—

(A) by inserting ", research" after "conservation"; and

(B) by striking "and" after the semicolon at the end;

(3) in paragraph (5) by striking the period at the end and inserting a semicolon instead; and

(4) by adding at the end the following:

"(6) protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations; and

"(7) the Nation can contribute to that maintenance by including sites representative of biogeographic regions of its coastal and ocean waters and Great Lakes among the national marine sanctuaries established under this title.".

(b) PURPOSES AND POLICIES.—Section 301(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to read as follows:

"(b) PURPOSES AND POLICIES.—The purposes and policies of this title are—

"(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;

"(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

"(3) to support, promote and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

"(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment;

"(5) to allow, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

"(6) to develop and implement coordinated plans for the conservation and management of these areas with assistance from appropriate Federal agencies, State, local and native governments, and other public and private interests;

"(7) to create models of, and incentives for, ways to conserve and manage these areas;

"(8) to cooperate with global programs encouraging conservation of marine resources; and

"(9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.".

SEC. 3. DEFINITIONS.

(a) MARINE ENVIRONMENT.—Section 302(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(3)) is amended by adding "including the Exclusive Economic Zone," after "jurisdiction,".

(b) DAMAGES.—Section 302(6) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(6)) is amended—

(1) in subparagraph (A)(ii) by striking "and" at the end;

(2) in subparagraph (B) by inserting "and" at the end; and

(3) by adding at the end the following:

"(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;".

(c) RESPONSE COSTS.—Section 302(7) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(7)) is amended by inserting "or authorized" after "taken".

(d) SANCTUARY RESOURCE.—Section 302(8) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(8)) is amended—

(1) by inserting "cultural," after "educational,";

(2) by striking the period after "value of the sanctuary" and inserting instead "; and"; and

(3) by adding the following after paragraph (8):

"(9) 'Exclusive Economic Zone' means the Exclusive Economic Zone as defined in the Magnuson Fishery Conservation and Management Act.".

(e) TECHNICAL CORRECTION.—Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432) is amended—

(1) in paragraph (1) by striking "304(a)(1)(E)" and inserting "304(a)(1)(C)(v)"; and

(2) in paragraph (5) by striking "and" after the semicolon.

SEC. 4. SANCTUARY DESIGNATION STANDARDS.

(a) STANDARDS.—Section 303(a)(2)(B) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(a)(2)(B)) is amended by inserting "or should be supplemented" after "inadequate".

(b) FACTORS AND CONSULTATIONS.—

(1) Section 303(b)(1)(A) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(b)(1)(A)) is amended by inserting "maintenance of critical habitat of endangered species," after "assemblages,".

(2) Section 303(b)(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(b)(3)) is amended—

(A) by inserting ", governmental," after "other commercial" and inserting ", governmental," after "any commercial";

(B) by adding at the end "The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report regarding any past, present, or proposed future disposal of materials or detonation of ordnance in the vicinity of the proposed sanctuary."; and

(C) by striking "304(a)(1)" and inserting "304(a)(2)".

SEC. 5. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

(a) SANCTUARY PROPOSAL.—Section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended—

(1) by striking "prospectus" wherever it appears and inserting instead "documents";

(2) in subparagraph (a)(1)(C) by striking "a prospectus on the proposal which shall contain—" and inserting instead "documents, including an executive summary, consisting of—";

(3) by adding after paragraph (a)(3) the following:

"(4) FEDERAL AGENCY COMMENTS.—Comments by Federal agencies on any notice or documents issued under this section must be provided to the Secretary by the close of the official public comment period required by the National Environmental Policy Act of 1969.";

(4) by renumbering the remaining paragraphs accordingly;

(5) by altering any reference to the renumbered paragraphs accordingly;

(6) in former paragraph (a)(4) by inserting "cultural," after "educational,"; and

(7) in former paragraph (a)(5)—

(A) by striking "United States Fishery Conservation Zone" and inserting instead "United States Exclusive Economic Zone"; and

(B) by adding at the end "The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.".

(b) TAKING EFFECT OF DESIGNATIONS.—Section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b)) is amended—

(1) in paragraph (1) by striking the dash after "unless" and inserting instead ", in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.";

(2) by striking subparagraphs (b)(1)(A) and (b)(1)(B);

(3) in paragraph (b)(2) by—

(A) striking "(A) or (B)" before "will affect";

(B) by striking "not disapproved under paragraph (1)(A) or"; and

(C) by striking "(B)" before "shall take effect."; and

(4) by striking paragraph (b)(3) and renumbering the following paragraph.

(c) ACCESS AND VALID RIGHTS.—Section 304(c)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(c)) is amended to read as follows:

"(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.".

(d) ANNUAL REPORT.—Section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended by adding at the end the following:

"(d) ANNUAL REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress, no later than February 15 of each year, a status report on the National Marine Sanctuary Program.

"(e) INTERAGENCY COOPERATION.—(1) Subject to any guidelines the Secretary may establish, the head of a Federal agency shall consult with the Secretary on a prospective agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

"(2) Promptly after the conclusion of consultations under paragraph (1), the Secretary shall provide to the head of a Federal agency a written statement setting forth the Secretary's determination whether the agency action is likely to destroy, cause the loss of, or injure any sanctuary resource. The statement shall also include a summary of the information on which the determination is based. If the Secretary finds that the action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall suggest reasonable and prudent alternatives which can be taken by the Federal agency in implementing the agency action which will conserve sanctuary resources.".

SEC. 6. INTERNATIONAL COOPERATION.

Section 305 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1435) is amended—

(1) in the heading of the section by striking "**APPLICATION OF REGULATIONS AND INTERNATIONAL NEGOTIATIONS**" and inserting instead "**INTERNATIONAL REGULATION AND COOPERATION**"; and

(2) by adding at the end the following:

"(c) INTERNATIONAL COOPERATION.—The Secretary, in consultation with the Secretary of State and the heads of other appropriate Federal agencies, shall cooperate with foreign countries and international organizations to further the purposes and policies of this title, consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.".

SEC. 7. PROHIBITED ACTIVITIES.

Section 306 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1436) is amended to read as follows:

"SEC. 306. PROHIBITED ACTIVITIES.

"It is unlawful to—

"(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

"(2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

"(3) interfere with the enforcement of this title; or

"(4) violate any provision of this title or any regulation or permit issued pursuant to this title.".

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTIES.—

(1) Section 307(c)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(c)(1)) is amended by striking "$50,000" and inserting instead "$100,000".

(2) Section 307(c)(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(c)(3)) is amended by adding at the end "The penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.".

(b) FORFEITURE.—Section 307(d)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(d)(1)) is amended by adding at the end "The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as damages under section 312 of this title.".

(c) USE OF RECEIVED AMOUNTS.—Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended by striking subsection (e)(1) and inserting the following:

"(1) EXPENDITURES.—

"(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act.

"(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this title or any regulation or permit issued under this title.

"(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

"(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

"(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

"(iii) manage and improve any other national marine sanctuary.".

(d) CONFORMING AMENDMENT.—Section 312(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(d)) is amended by—

(1) striking "and civil penalties under section 307";

(2) striking paragraph (3); and

(3) renumbering the remaining paragraph.

(e) ENFORCEABILITY.—Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended by adding at the end the following:

"(j) AREA OF APPLICATION AND ENFORCEABILITY.—The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.".

SEC. 9. MONITORING AND EDUCATION.

Section 309 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1440) is amended—

(1) by inserting ", **MONITORING, AND EDUCATION**" at the end of the section heading;

(2) by inserting "take such action as is necessary to";

(3) by inserting ", monitoring, and education" before "purposes";

(4) in paragraph (1)—

(A) by striking "National Oceanic and Atmospheric Administration" and inserting instead "Under Secretary of Commerce for Oceans and Atmosphere";

(B) by inserting ", monitoring, and education" before ", give priority"; and

(C) by striking "to research involving" and inserting instead ", to the extent practicable, to activities which involve"; and

(5) in paragraph (2) by inserting before the period at the end ", monitoring, and education, including coordination with the system of national estuarine reserves established under section 315 of the Coastal Zone Management Act of 1972".

SEC. 10. COOPERATIVE AGREEMENTS AND DONATIONS.

Section 311 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1442) is amended to read as follows:

"SEC. 311. COOPERATIVE AGREEMENTS, GRANTS, DONATIONS, AND ACQUISITIONS.

"(a) AGREEMENTS AND GRANTS.—The Secretary may enter into cooperative agreements and financial agreements, including contracts and grants, with any State, tribal or local government, regional or interstate agency, private person, or nonprofit organization to assist the Secretary in carrying out the purposes and policies of this title.

"(b) DONATIONS.—

"(1) ACCEPTANCE OF DONATIONS.—The Secretary may solicit and accept donations of funds, property, and services as gifts or bequests for use in designating and administering national marine sanctuaries under this title.

"(2) AGREEMENTS.—The Secretary may enter into agreements with any nonprofit organization authorizing the organization to solicit donations for the Secretary under this subsection.

"(3) ACQUISITIONS.—The Secretary may acquire by purchase, lease, or exchange, any

land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title.".

SEC. 11. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) LIABILITY FOR INTEREST.—Section 312(a)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)(1)) is amended to read as follows:

"(1) LIABILITY TO UNITED STATES.—Any person who destroys, causes the loss of, or injuries any sanctuary resource is liable to the United States for an amount equal to the sum of—

"(i) the amount of response costs and damages resulting from the destruction, loss, or injury; and

"(ii) interest on that amount calculated under section 1005 of the Oil Pollution Act of 1990.".

(b) LIABILITY IN REM.—Section 312(a)(2) of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)(2)) is amended by adding at the end: "The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.".

(c) LIMITS TO LIABILITY.—Section 312(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)) is amended by adding at the end the following:

"(4) LIMITS TO LIABILITY.—Nothing in sections 4281–4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893, shall limit the liability of any person under this title.".

(d) RESPONSE ACTIONS.—Section 312(b)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(b)(1)) is amended by inserting "or authorize" after "undertake".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

Section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444) is amended to read as follows:

"SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Secretary to carry out this title the following—

"(1) $8,000,000 for fiscal year 1993;

"(2) $16,000,000 for fiscal year 1994;

"(3) $20,000,000 for fiscal year 1995; and

"(4) $25,000,000 for fiscal year 1996.".

SEC. 13. ADVISORY COUNCILS AND SHORT TITLE.

The Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended by adding at the end the following:

"SEC. 315. ADVISORY COUNCILS.

"(a) ESTABLISHMENT.—The Secretary may establish one or more advisory councils (in this section referred to as an 'Advisory Council') to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

"(b) MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—

"(1) persons employed by Federal or State agencies with expertise in management of natural resources;

"(2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act; and

"(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

"(c) LIMITS ON MEMBERSHIP.—For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

"(d) PAY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), members of an Advisory Council shall serve without pay.

"(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(e) STAFFING AND ASSISTANCE.—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

"(f) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

"(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

"(2) Emergency meetings may be held at the call of the chairman or presiding officer.

"(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register.

"(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

"SEC. 316. SHORT TITLE.

"This title may be cited as 'The National Marine Sanctuaries Act'.".

SEC. 14. GRAVEYARD OF THE ATLANTIC ARTIFACTS.

(a) ACQUISITION OF SPACE.—Pursuant to section 314 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1445) and consistent with the Cooperative Agreement entered into in October, 1989, between the National Oceanic and Atmospheric Administration and the Mariner's Museum of Newport News, Virginia, the Secretary shall make a grant for the acquisition of space in Hatteras Village, North Carolina, for—

(1) the display and interpretation of artifacts recovered from the area of the Atlantic Ocean adjacent to North Carolina generally known as the Graveyard of the Atlantic, including artifacts recovered from the Monitor National Marine Sanctuary; and

(2) administration and operations of the Monitor National Marine Sanctuary.

(b) AUTHORIZATION.—To carry out the Secretary's responsibilities under this section, there are authorized to be appropriated to the Secretary a total of $800,000 for fiscal years 1993 and 1994, to remain available until expended.

(c) FEDERAL SHARE.—Not more than two-thirds of the cost of space acquired under this section may be paid with amounts provided pursuant to this section.

TITLE II—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

SEC. 21. SHORT TITLE.

This title may be cited as the "Hawaiian Islands Humpback Whale National Marine Sanctuary Act".

SEC. 22. FINDINGS.

The Congress finds the following:

(1) Many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance and importance.

(2) There are at present no ocean areas in the Hawaiian Islands designated as national marine sanctuaries or identified on the Department of Commerce's Sanctuary Evaluation List of sites to be investigated as potential candidates for designation as a national marine sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(3) The Hawaiian Islands consist of 8 major islands and 124 minor islands, with a total land area of 6,423 square miles and a general coastline of 750 miles.

(4) The marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem.

(5) The Department of Commerce recently concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there is preliminary evidence of both biological, cultural, and historical resources adjacent to Kahoolawe Island to merit further investigation for national marine sanctuary status.

(6) The Department of Commerce also concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there are additional marine areas within the Hawaiian archipelago which merit further consideration for national marine sanctuary status and the national marine sanctuary program could enhance marine resource protection in Hawaii.

(7) The Hawaiian stock of the endangered humpback whale, the largest of the three North Pacific stocks, breed and calve within the waters of the main Hawaiian Islands.

(8) The marine areas surrounding the main Hawaiian Islands, which are essential breeding, calving, and nursing areas for the endangered humpback whale, are subject to damage and loss of their ecological integrity from a variety of disturbances.

(9) The Department of Commerce recently promulgated a humpback whale recovery plan which sets out a series of recommended goals and actions in order to increase the abundance of the endangered humpback whale.

(10) An announcement of certain Hawaiian waters frequented by humpback whales as an active candidate for marine sanctuary designation was published in the Federal Register on March 17, 1982 (47 FR 11544).

(11) The existing State and Federal regulatory and management programs applicable to the waters of the main Hawaiian Islands are inadequate to provide the kind of comprehensive and coordinated conservation and management of humpback whales and their habitat that is available under title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(12) Authority is needed for comprehensive and coordinated conservation and management of humpback whales and their habitat that will complement existing Federal and State regulatory authorities.

(13) There is a need to support, promote, and coordinate scientific research on, and monitoring of, that portion of the marine environment essential to the survival of the humpback whale.

(14) Public education, awareness, understanding, appreciation, and wise use of the marine environment is fundamental to the protection and conservation of the humpback whale.

(15) The designation, as a national marine sanctuary, of the areas of the marine environment adjacent to the main Hawaiian Is-

lands which are essential to the continued recovery of the humpback whale is necessary for the preservation and protection of this important national marine resource.

(16) The marine sanctuary designated for the conservation and management of humpback whales could be expanded to include other marine resources of national significance which are determined to exist within the sanctuary.

SEC. 23. DEFINITIONS.

In this title, the following definitions apply:

(1) The term "adverse impact" means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

(2) The term "Sanctuary" means the Hawaiian Islands Humpback Whale National Marine Sanctuary designated under section 25.

(3) The term "Secretary" means the Secretary of Commerce.

SEC. 24. POLICY AND PURPOSE.

(a) POLICY.—It is the policy of the United States to protect and preserve humpback whales and their habitat within the Hawaiian Islands marine environment.

(b) PURPOSE.—The purposes of this title are—

(1) to protect humpback whales and their habitat in the area described in section 25(b);

(2) to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;

(3) to manage such human uses of the Sanctuary consistent with this title and title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this Act; and

(4) to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary designated in section 25(a).

SEC. 25. DESIGNATION OF SANCTUARY.

(a) DESIGNATION.—Subject to subsection (c), the area described in subsection (b) is designated as the Hawaiian Islands Humpback Whale National Marine Sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1451 et seq.).

(b) AREA INCLUDED.—

(1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward of the upper reaches of the wash of the waves on shore—

(A) to the 100-fathom (183-meter) isobath adjoining the islands of Lanai, Maui, Kahoolawe, and Molokai, including Penguin Bank; and

(B) to the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward.

(2) The Secretary shall generally identify and depict the Sanctuary on National Oceanic and Atmospheric Administration charts. Those charts shall be maintained on file and kept available for public examination during regular business hours at the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration. The Secretary shall update the charts to reflect any boundary modification under subsection (d).

(c) EFFECT OF OBJECTION BY GOVERNOR.—

(1) If within 45 days after the date of enactment of this Act the Governor of Hawaii certifies to the Secretary that the designation is unacceptable, the designation shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(2) If within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 26 the Governor of Hawaii certifies to the Secretary that the management plan, any implementing regulation, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(3) If the Secretary considers that an action taken under paragraph (1) or (2) will affect the Sanctuary in a manner that the policy and purposes of this title cannot be fulfilled, the Secretary may terminate the entire designation under subsection (a). At least 30 days prior to such termination, the Secretary shall submit written notification of the proposed termination to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(d) BOUNDARY MODIFICATIONS.—No later than the date of issuance of the draft environmental impact statement for the Sanctuary under section 304(a)(1)(C)(vii) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(a)(1)(C)(vii)), the Secretary, in consultation with the Governor of Hawaii, if appropriate, may make modifications to the boundaries of the Sanctuary as necessary to fulfill the purpose of this title. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications.

SEC. 26. COMPREHENSIVE MANAGEMENT PLAN.

(a) PREPARATION OF PLAN.—The Secretary, in consultation with interested persons and appropriate Federal, State, and local government authorities, shall develop and issue not later than 18 months after the date of enactment of this Act a comprehensive management plan and implementing regulations to achieve the policy and purpose of this title. In developing the plan and regulations, the Secretary shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434). Such comprehensive management plan shall—

(1) allow all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of the protection of humpback whales and their habitat;

(2) set forth the allocation of Federal and State enforcement responsibilities, as jointly agreed by the Secretary and the State of Hawaii;

(3) identify research needs and establish a long-term ecological monitoring program with respect to humpback whales and their habitat;

(4) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 27 of this title and section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);

(5) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary; and

(6) promote education among users of the Sanctuary and the general public about conservation of humpback whales, their habitat, and other marine resources.

(b) PUBLIC PARTICIPATION.—The Secretary shall provide for participation by the general public in development of the comprehensive management plan or any amendment thereto.

SEC. 27. AUTHORIZATION OF APPROPRIATIONS.

For carrying out this title, there are authorized to be appropriated to the Secretary $500,000 for fiscal year 1993 and $300,000 for fiscal year 1994. Of the amounts appropriated under this section for fiscal year 1993—

(1) not less than $50,000 shall be used by the Western Pacific Regional Team to evaluate potential national marine sanctuary sites for inclusion on the Department of Commerce's Sanctuary Evaluation List; and

(2) not less than $50,000 shall be used to continue the investigation of biological, cultural, and historical resources adjacent to Kahoolawe Island.

TITLE III—MISCELLANEOUS

SEC. 31. STELLWAGEN BANK NATIONAL MARINE SANCTUARY.

(a) DESIGNATION.—The area described in subsection (b) is designated as the Stellwagen Bank National Marine Sanctuary (hereafter in this section referred to as the "Sanctuary").

(b) AREA.—The Sanctuary shall consist of all submerged lands and waters, including living and nonliving marine resources within those waters, bounded by the area described as Boundary Alternative 3 in the Draft Environmental Impact Statement and Management Plan for the Proposed Stellwagen Bank National Marine Sanctuary, published by the Department of Commerce in January 1991, except that the western boundary shall be modified as follows:

(1) The southwestern corner of the Sanctuary shall be located at a point off Provincetown, Massachusetts, at the following coordinates: 42 degrees, 7 minutes, 44.89 seconds (latitude), 70 degrees, 28 minutes, 15.44 seconds (longitude).

(2) The northwestern corner of the Sanctuary shall be located at a point off Cape Ann, Massachusetts, at the following coordinates: 42 degrees, 37 minutes, 53.52 seconds (latitude), 70 degrees, 35 minutes, 52.38 seconds (longitude).

(c) MANAGEMENT.—The Secretary of Commerce shall issue a management plan for the Sanctuary in accordance with section 304 of the Marine Protection, Research, and Sanctuary Act of 1972 (16 U.S.C. 1434).

(d) SAND AND GRAVEL MINING ACTIVITIES PROHIBITED.—Notwithstanding any other provision of law, exploration for, and mining of, sand and gravel and other minerals in the Sanctuary is prohibited.

(e) CONSULTATION.—Pursuant to section 304(e) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this Act, the appropriate Federal agencies shall consult with the Secretary of Commerce on all prospective agency actions in the vicinity of the Sanctuary regarding the potential impact of those activities on sanctuary resources.

(f) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Commerce for carrying out the purposes of this section $570,000 for fiscal year 1993 and $250,000 for fiscal year 1994.

SEC. 32. MONTEREY BAY NATIONAL MARINE SANCTUARY.

(a) ISSUANCE OF DESIGNATION NOTICE.—Notwithstanding section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b))—

(1) by not later than September 18, 1992, the Secretary of Commerce shall publish

under that Act in the Federal Register a notice of designation of the Monterey Bay National Marine Sanctuary (hereafter in this section the "Sanctuary"); and

(2) the designation of the Sanctuary pursuant to that notice shall take effect on September 18, 1992.

(b) EXCEPTIONS.—The designation or a term of the designation under subsection (a)—

(1) shall not apply if it is disapproved by a joint resolution enacted by the Congress prior to September 18, 1992; and

(2) shall not take effect in areas within the seaward boundary of the State of California, if the Governor of the State of California certifies to the Secretary of Commerce before that date that it is unacceptable.

(c) FAILURE TO DESIGNATE.—If the Secretary of Commerce fails to meet the requirements of subsection (a), the area described and depicted as Boundary Alternative 5 in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary, published by the Department of Commerce in June 1992, is designated as the Monterey Bay National Marine Sanctuary, effective September 18, 1992.

(d) SANCTUARY MANAGEMENT.—

(1) MANAGEMENT PLAN.—

(A) The Secretary of Commerce shall issue a management plan and implementing regulations for the Sanctuary in accordance with section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434).

(B) The Sanctuary shall be managed and regulations enforced under all applicable provisions of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) as if the Sanctuary had been designated under that title.

(2) OIL AND GAS ACTIVITIES PROHIBITED.—Notwithstanding any other provision of law, no leasing, exploration, development, or production of minerals or hydrocarbons shall be permitted within the Sanctuary.

SEC. 33. SAN LUIS OBISPO STUDY.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study of the area described in subsection (d) for purposes of making determinations and findings in accordance with section 303(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(a)), regarding whether or not all or any part of that area is appropriate for designation as a national marine sanctuary under that Act. Not less than ½ of the cost of the study shall be contributed by non-Federal sources prior to beginning the study.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that sets forth the determinations and findings referred to in subsection (a).

(c) LIMITATION ON APPLICATION.—If not less than ½ of the cost of a study under subsection (a) have not been provided by non-Federal sources before January 1, 1994, the requirements of this section shall no longer apply.

(d) AREA INCLUDED.—The area referred to in subsection (a) includes—

(1) the area of the marine environment off the coast of California generally known as Estero Bay; and

(2) significant, adjacent marine environments associated with Estero Bay.

SEC. 34. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES.

(a) IN GENERAL.—Beginning on the date of enactment of this Act, the Secretary shall conduct a 2-year pilot project to enhance funding for designation and management of national marine sanctuaries.

(b) PROJECT.—The project shall consist of—

(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;

(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

(4) the authorization by the Secretary of the use of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(5) the establishment and collection by the Secretary of fees from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);

(6) the retention of any fees assessed under paragraph (5) by the Secretary in an interest-bearing revolving fund; and

(7) the expenditure of any fees and any interest in the fund established under paragraph (6), without appropriation, by the Secretary to designate and manage national marine sanctuaries.

(c) CONTRACT AUTHORITY.—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (b).

(d) RESTRICTIONS.—The Secretary may restrict the use of the symbols published under subsection (b), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

(e) PROPERTY OF UNITED STATES.—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (b) is deemed to be the property of the United States.

(f) PROHIBITED ACTIVITIES.—(1) It is unlawful for any person—

(A) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

(B) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

(C) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a fee to the Secretary; and

(D) to violate any regulation promulgated by the Secretary under this section.

(2) Violation of this section shall be considered a violation of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(g) REPORT.—No later than 30 months after the date of enactment of this Act, the Secretary shall submit a report on the pilot project to Congress regarding the success of the program in providing additional funds for management and operation of national marine sanctuaries.

(h) DEFINITIONS.—In this section—

(1) "national marine sanctuary" or "national marine sanctuaries" means a national marine sanctuary or sanctuaries designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), or by other law in accordance with title III of the Marine Protection, Research, and Sanctuaries Act of 1972;

(2) "official sponsor" means any person designated by the Secretary who is authorized to manufacture, reproduce, or use any symbol created, adopted, and published in the Federal Register under this section for a fee paid to the Secretary; and

(3) "Secretary" means the Secretary of Commerce.

(i) USE OF APPROPRIATIONS.—Of sums appropriated to the Secretary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), for administration of the national marine sanctuary program, the Secretary may expend a total of $100,000 for fiscal years 1993 and 1994 to carry out this section.

SEC. 35. TECHNICAL CORRECTIONS RELATING TO COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) AMENDMENT OF COASTAL ZONE MANAGEMENT ACT OF 1972.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(b) TECHNICAL CORRECTIONS.—

(1) The Act is amended by—

(A) striking "coastal State" each place it appears and inserting "coastal state";

(B) striking "coastal States" each place it appears and inserting "coastal states"; and

(C) striking "coastal State's" each place it appears and inserting "coastal state's".

(2) Section 6203(b)(1) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-301, relating to section 303(2) of the Coastal Zone Management Act of 1972) is amended by striking "as well as the" the first place it appears and inserting "as well as to".

(3) Section 6204(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-302, relating to section 304(1) of the Coastal Zone Management Act of 1972) is amended—

(A) in the matter preceding paragraph (1) by striking "The third sentence of section" and inserting "Section";

(B) in paragraph (1) by inserting after "period at the end" the following: "of the third sentence"; and

(C) in paragraph (2) by inserting after "territorial sea.'" the following: "at the end of the second sentence".

(4) Section 6204(b) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-302) is amended by striking "following'" and inserting "following:".

(5) Section 304(1) (16 U.S.C. 1453(1)) is amended in the second sentence—

(A) by striking "the outer limit of" the first place it appears; and

(B) by striking "1705," and inserting "1705),".

(6) Section 304(2) (16 U.S.C. 1453(2)) is amended by striking "the term" and inserting "The term".

(7) Section 304(9) (16 U.S.C. 1453(9)) is amended to read as follows:

"(9) The term 'Fund' means the Coastal Zone Management Fund established under section 308(b).".

(8) Section 306(b) (16 U.S.C. 1455(b)) is amended by striking the semicolon at the end and inserting a period.

(9) Section 6216(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-314, relating to section 306A(b)(1) of the Coastal Zone Management Act of 1972) is amended by striking "306a(b)(1)" and inserting "306A(b)(1)".

(10) Section 306A(a)(1)(B) (16 U.S.C. 1455a(a)(1)(B)) is amended by striking "specified" and all that follows through the end of the sentence and inserting "specified in section 303(2)(A) through (K).".

(11) Section 306A(b) (16 U.S.C. 1455a(b)) is amended—

(A) in paragraph (2) by striking "that are designated" and all that follows through the end of the paragraph and inserting "that are designated in the state's management program pursuant to section 306(d)(2)(C) as areas of particular concern."; and

(B) in paragraph (3) by—

(i) striking "access of" and inserting "access to"; and

(ii) striking "in accordance with" and all that follows through the end of the paragraph and inserting "in accordance with the planning process required under section 306(d)(2)(G).".

(12) Section 306A(c) (16 U.S.C. 1455a(c)) is amended in paragraph (2)(C) in the matter following clause (iii) by striking "shall not by" and inserting "shall not be".

(13) Section 6208(b)(3)(B) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-308, relating to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972) is amended by inserting "with" after "complies".

(14) Section 307(i) (16 U.S.C. 1456(i)) is amended—

(A) by inserting "(1)" after "(i)";

(B) in paragraph (1) (as designated by subparagraph (A) of this paragraph) by striking the second sentence; and

(C) by adding at the end the following:

"(2)(A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

"(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

"(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 308.".

(15) Section 6209 of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-308, relating to section 308 of the Coastal Zone Management Act of 1972) is amended in the matter preceding the quoted material by striking "1456" and inserting "1456a".

(16) Section 308(a)(1) (16 U.S.C. 1456a(a)(1)) is amended in the first sentence by striking "pursuant to this Act" and inserting "pursuant to this title".

(17) Section 308(b)(1) (16 U.S.C. 1456a(b)(1)) is amended by striking "(hereinafter" and all that follows through "'Fund')".

(18) Section 308(b)(1) (16 U.S.C. 1456a(b)(1)) is amended by inserting after "subsection (a)" the following: "and fees deposited into the Fund under section 307(i)(3)".

(19) The first section 313 (16 U.S.C. 1459) is amended—

(A) in subsection (a) by striking "section 308" and inserting "section 308, as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990,"; and

(B) in paragraph (1) of subsection (b) by striking "section 308(d)" and all that follows through the end of the paragraph and inserting "section 308, as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990; and".

(20) The second section 313 (16 U.S.C. 1460, relating to Walter B. Jones excellence in coastal zone management awards) is amended—

(A) by redesignating that section as section 314;

(B) in subsection (a) by inserting after "under section 308" the following: "and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315)"; and

(C) in subsection (e) by inserting after "under section 308" the following: "and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315)".

(21) Section 315(a) (16 U.S.C. 1461(a)) is amended by striking "National Estuarine Reserve Research System" and inserting "National Estuarine Research Reserve System".

(22) Section 315(c)(4) (16 U.S.C. 1461(c)(4)) is amended by striking "subsection (1)" and inserting "paragraph (1)".

(23) Section 316(a) (16 U.S.C. 1462(a)) is amended in clause (5) by striking "subsections (c) and (d) of this section" and inserting "subsections (c) and (d) of section 312".

(24) Section 6217(i)(3) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-319, relating to definitions under that Act) is amended—

(A) by striking the comma; and

(B) by inserting "Zone" after "Coastal".

SEC. 36. REAUTHORIZATION OF FLORIDA KEYS NATIONAL MARINE SANCTUARY WATER QUALITY PROTECTION PROGRAM.

In addition to amounts otherwise available, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1993 through 1996 for the water quality protection program for the Florida Keys National Sanctuary developed under section 8 of the Florida Keys National Marine Sanctuary and Protection Act (Public Law 101-605).

SEC. 37. RESEARCH TO IMPROVE MANAGEMENT.

(a) FLORIDA NATIONAL MARINE SANCTUARY.—Section 7(a) of the Florida Keys National Marine Sanctuary and Protection Act (Public Law 101-605) is amended by striking paragraph (4), inserting the following new paragraphs, and renumbering subsequent paragraphs accordingly:

"(4) identify priority needs for research and amounts needed to—

"(A) improve management of the Sanctuary, and in particular, the coral reef ecosystem within the Sanctuary; and

"(B) identify clearly the cause and effect relationships between factors threatening the health of the coral reef ecosystem in the Sanctuary;

"(5) establish a long-term ecological monitoring program and data base, including methods to disseminate information on the management of the coral reef ecosystem;".

(b) DEADLINES NOT AFFECTED.—The provisions of this section shall not be construed to modify, by implication or otherwise, the deadlines established under—

(1) section 7(a) of the Florida Keys National Marine Sanctuary and Protection Act regarding completion of the comprehensive management plan and final regulations; or

(2) section 8(a) of that Act regarding development of the water quality protection program.

SEC. 38. OLYMPIC COAST NATIONAL MARINE SANCTUARY.

No oil or gas leasing or preleasing activity shall be conducted within the area designated as an Olympic Coast National Marine Sanctuary in accordance with Public Law 100-627.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, as one of the authors of this bill, Mr. Speaker, I cannot emphasize enough its importance to protecting the marine environment. Ever since its creation 20 years ago, the National Marine Sanctuary Program has been visionary in one very important aspect—preserving special areas of the marine environment for a variety of uses.

Balancing humans needs against the fragility of our coastal marine environments is not easy. We in Massachusetts know that as well as anyone. But the National Marine Sanctuary Program manages to juggle those needs. It has served to protect marine resources as diverse as the commerical fisheries of the Gulf of the Farallones and the wreck of the U.S.S. *Monitor*.

Today the House will debate H.R. 4310, the National Marine Sanctuary Reauthorization and Improvement Act of 1992. The bill streamlines the designation process, clarifies and strengthens NOAA's management authority, and authorizes funding at the needed levels. With the designation of three new sanctuaries in the bill, and sanctuaries off the Olympic Coast of Washington; Norfolk Canyon off Virginia; and Thunder Bay in Michigan undergoing evaluation for designation within the next 2 years, it is clearly time to reauthorize and improve this program.

Before I explain the amendments to H.R. 4310, I would like to add a point of explanation for the record. The phrase "treaty right" added to section 304(c)(1), is deleted under the substitute amendment. The deletion eliminates concerns that the proposed language could be construed to expand the Secretary's authority to regulate Indian treaty right activities beyond the Secretary's existing authority to enact nondiscriminatory regulations to the extent necessary for resource protection. It is not the intent of this committee or of this body that H.R. 4310 in any way abrogate, modify, or diminish treaty rights.

The bill before this body today contains a committee amendment which was not in this bill as reported out of

Merchant Marine and Fisheries Committee. The amendment designates three sanctuaries that have been under NOAA consideration: The Hawaiian Islands Humpback Whale National Marine Sanctuary, the Stellwagen Bank National Marine Sanctuary, and the Monterey Bay National Marine Sanctuary. With the adoption of H.R. 4310, the National Marine Sanctuary Program will cover twice the area of the 10 sanctuaries designated from 1975 through 1991.

The amendment also instructs NOAA to conduct a study of San Luis Obispo, CA, for possible sanctuary designation, and to undertake a pilot project—modeled after the Olympics—to develop a symbol and seek out sponsors for the sanctuary program.

Two provisions relating to the Florida Keys National Marine Sanctuary are included in the committee's amendment. The first extends NOAA's authority to complete a study for water quality protection in the Florida Keys, and the second instructs NOAA to undertake the development of a coral reef research and management program unique to the Keys.

Finally, the committee's amendment establishes a ban on oil and gas leases in the Olympic Coast National Marine Sanctuary, and includes a number of technical and conforming amendments to the Coastal Zone Management Act.

A number of these amendments have been triggered by the fact that this administration and the previous one have occasionally forgotten that resource protection is a sanctuary's primary goal under the law, and have unreasonably delayed the designation of new sanctuaries in order to protect private interests. Most recently, these delaying tactics have been led by the Vice President's Council on Competitiveness. This convenient lack of memory is occurring right now in relation to the proposed Stellwagen Bank National Marine Sanctuary in the waters of Massachusetts, and has led to the inclusion of that designation in H.R. 4310.

For almost a decade, Stellwagen Bank languished on the back burners of NOAA's National Marine Sanctuary Program. During that time, threats to the integrity of this incredible marine ecosystem have continued to build. In 1990, NOAA finally began the process of making Stellwagen Bank a sanctuary—with support from virtually the entire Commonwealth of Massachusetts. NOAA has so far done an excellent job of moving Stellwagen toward sanctuary status, and I would like to take this opportunity to thank them for their efforts. However, a philosophical debate within the administration now threatens to kill this designation—a debate over the legitimacy of leaving Stellwagen Bank open to offshore sand and gravel mining.

The fact that the Department of the Interior would even consider the possibility of sand and gravel mining in a highly productive marine ecosystem is nothing short of ludicrous. Stellwagen Bank is sand and gravel—mine it, and you destroy the very reason for establishing this sanctuary in the first place. NOAA's draft environmental impact statement for the Stellwagen Bank Sanctuary recognized how harmful mining could be to this ecosystem, and the Department of the Interior should do the same. This ridiculous debate must be stopped here and now. Government by special interest does not fly in the Commonwealth of Massachusetts—government by the people does.

We have also included a provision in the Stellwagen Bank Sanctuary designation that requires Federal agencies to consult with NOAA on all proposed actions in the vicinity of the sanctuary regarding their potential impact on sanctuary resources. This provision is more stringent than the general consultation provision included in H.R. 4310, which does not require consultation on all Federal actions, only on those that are likely to harm sanctuary resources. Due to the special nature of the Stellwagen Bank ecosystem, and the variety of activities that occur in Massachusetts Bay, it is essential that we take extra care.

I would like to close by stressing the importance of this bill, and by thanking my colleagues on the Committee on Merchant Marine and Fisheries who worked so hard to bring it before you today. I urge its support.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 4310 and urge its adoption.

This bill is the product of many compromises worked out by the majority and the minority sides of our committee. It is not a perfect bill and there are still changes that some Members would like to see made. Nevertheless, I believe it is the best compromise that could be obtained under the circumstances.

I do want to call the Members' attention to section 7 of the bill dealing with prohibited activities. As the committee report—House Report 102-565—explains, we are not attempting to prohibit activities such as commercial fishing that occur outside of a sanctuary, even though those same fish may be found in the sanctuary. This same understanding applies to section 301(b)(2) of the Marine Sanctuaries Act, as amended by this bill.

Further, in regard to the Hawaiian Islands Humpback Whale Sanctuary that is created in title II of this bill, Members should note that this language does not prevent NOAA from examining other areas around the Hawaiian Islands for use as marine sanctuaries. Also, it is the intent of our committee that NOAA follow the normal procedure for developing the management plan for this sanctuary and may include regulations protecting other nationally significant marine resources within the sanctuary.

Mr. Speaker, again I believe this bill is an excellent compromise and should be supported.

Mr. Speaker, I reserve the balance of my time.

Mr. STUDDS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Washington [Mrs. UNSOELD].

Mr. Speaker, I rise in support of H.R. 4310 and to thank our committee leadership on both sides of the aisle for their efforts in bringing this bill to the floor today. I particularly appreciate their efforts to address some of my concerns surrounding designation of the Olympic Coast National Marine Sanctuary. I also appreciate the support from my friends and Washington State colleagues SID MORRISON and JOHN MILLER to ensure responsible management of the unique marine resources found within the Olympic Coast Sanctuary region. We are all indebted to the esteemed chairman from Massachusetts, Mr. STUDDS, for his typically fine leadership.

Congress directed the National Oceanic and Atmospheric Administration [NOAA] to designate a portion of the Washington coast as a national marine sanctuary in 1988. This direction recognized the unique natural resource values of the Olympic Coast and the opportunity under the National Marine Sanctuary Program to promote public education and scientific research.

Unfortunately, designation of this sanctuary is 2 years behind schedule. This delay has been caused by poor program management, lack of sufficient resources, and the insistence of the Minerals Management Service that oil and gas drilling be allowed within the sanctuary boundaries.

Last July, NOAA issued its preferred management plan in a draft environmental impact statement and management plan [EIS]. This plan would designate a discrete area off the Olympic National Park and prohibit oil and gas development within the boundaries. NOAA based this preferred management option on two points: First, its findings that the area has "significant natural resource values and qualities that are especially sensitive to potential impacts from OCS activities," and second, findings of the Minerals Management Service [MMS] that this area has "a higher environmental productivity and sensitivity ranking, and even lower hydrocarbon potential, than the Monterey Bay, CA, planning area which was recently closed off to oil and gas activities"—draft EIS, page 157.

The substitute offered today includes my provision to codify NOAA's pre-

ferred management option of prohibiting oil and gas development within the sanctuary. This prohibition will apply only to the area designated by NOAA in its final EIS. I propose this amendment because, despite NOAA's best judgment, there are some within the administration who still want to leave open the option of OCS development within the sanctuary.

This language is nearly identical to a provision I included in the comprehensive energy bill already adopted by this House. I am serious about permanent protection from oil and gas development along our coast, and ensuring such protection for the sanctuary region of our coast is an important first step.

Finally, Mr. Speaker, in addition to oil and gas development, there are a number of other outstanding issues that were raised during the public hearings on the draft EIS. These include authority to regulate ship traffic, sanctuary boundaries, and the Navy's use of an area known as sea lion rock as a bombing target. Although these concerns were raised nearly a year ago at public hearings, NOAA has failed to respond to them. My provision in today's bill is intended to permanently resolve just one issue—oil and gas development. The remaining ones must still be resolved by NOAA under authority of the National Marine Sanctuary Program. But we can only wait so long. Continued failure by NOAA to fulfill its responsibility to protect the unique resources of the Olympic Coast in a timely fashion, as required by law, will result in further legislation by this Member.

Mr. STUDDS. Mr. Speaker, I yield 1 minute to the gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. I thank the subcommittee chairman for yielding this time to me.

Mr. Speaker, I requested this time in order to engage in a colloquy with the chairman of the subcommittee.

Mr. Speaker, the committee amendment includes a provision that extends the authorization of the water quality protection program for the Florida Keys National Marine Sanctuary authorized in section 8 of the Florida Keys National Marine Sanctuary and Protection Act, enacted in 1990. This provision falls within the water quality jurisdiction of the Committee on Public Works and Transportation. We have reviewed the provision, and support its adoption.

Mr. STUDDS. Mr. Speaker, will the gentleman yield?

Mr. RAHALL. I yield to the chairman of the subcommittee.

Mr. STUDDS. I thank the gentleman for yielding.

Mr. Speaker, I appreciate the gentleman's statement. I concur in the jurisdictional point he has raised.

Mr. Speaker, I yield 2 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. I thank the gentleman for yielding to me.

Mr. Speaker, I would like very much to commend and thank the chairman of the subcommittee, the gentleman from Massachusetts [Mr. STUDDS], and the ranking minority member, the gentleman from Alaska [Mr. YOUNG], my good friend, for their commitment to the National Marine Sanctuaries Program.

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I think, being from Hawaii and from Alaska [Mr. YOUNG] and I have a particular affinity in that regard, and the gentleman from Massachusetts [Mr. STUDDS] of course, with his long and commendable service with respect to the Atlantic and his general knowledge with respect to matters regarding the ocean, has served this House in very good stead.

I would also like to thank the members of the Committee on Merchant Marine and Fisheries for including language in the committee amendment which will establish, as noted by the gentleman from Alaska [Mr. YOUNG], the National Humpback Whale Marine Sanctuary in Hawaiian waters. This provision will permit us to reverse a century of destruction and neglect.

Mr. Speaker, I want to note very particularly that this sanctuary is in regard to an area which is the breeding, calving, and nursing areas for the humpback whale, the breeding, calving and nursing areas. The humpback whales migrate yearly from Alaskan waters to Hawaii for calving. These 40-ton acrobats have inspired awe and enchantment for generations. Today, people visit Hawaii from all over the world to view the sight of these magnificent creatures.

But there is a downside to all this attention. The humpback whale is on the Endangered Species List and its population continues to decline. The need for Federal protection is obvious. Establishment of the Hawaiian Islands National Humpback Whale Marine Sanctuary is a welcome step in creating a protected environment for these unique animals and unique circumstances within which we find the calving and the breeding.

However, I am aware that the chairman and I share some concerns regarding the waters surrounding Kahoolawe and unexploded ordnance. People may not be aware that the Island of Kahoolawe has in the past been utilized in wartime activities, and there is the possibility of unexploded ordnance there.

Therefore, Mr. Speaker, I would like to engage in a brief colloquy with the chairman:

Do I have the gentleman's assurance that he will address this issue in conference with the Senate?

Mr. STUDDS. Mr. Speaker, will the gentleman yield?

Mr. ABERCROMBIE. I yield to the gentleman from Massachusetts.

Mr. STUDDS. Mr. Speaker, out of gratitude to the gentleman for his pronouncing the aforementioned island, the gentleman has my assurance.

Mr. ABERCROMBIE. Mr. Speaker, I say to the gentleman from Massachusetts, Thank you very much. "Kahoolawe" is a word that might prove formidable to virtually any other Member, but I am certain that the chairman, of all the Members, would be able to handle it, and we most certainly want to invite you to come out and see the situation, not necessarily where the unexploded ordnance is. Maybe I'll invite Mr. YOUNG to come with me on that one.

Mr. YOUNG of Alaska. All right.

Mr. ABERCROMBIE. Mr. Speaker, I thank the gentleman, and I most certainly thank the gentleman from Alaska [Mr. YOUNG], and for purposes of the RECORD let it be noted that he nodded his head most vigorously in the affirmative with respect to the invitation to come to Kahoolawe, and I offer my wholehearted support for this legislation, and the people from Hawaii say, "Mahalo."

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just think the RECORD should reflect there are equally unpronounceable places in the gentleman's State of Alaska. I urge all our colleagues to support this bill.

Mr. HERTEL. Mr. Speaker, this year marks the 20th anniversary of the National Marine Protection, Research, and Sanctuaries Act of 1972. It is appropriate today that the House will debate legislation to extend title III of that landmark legislation. I am pleased to request consideration of H.R. 4310, the National Marine Sanctuary Reauthorization and Improvement Act of 1992, which I introduced on February 25, 1992. The bill is cosponsored by Mr. HUGHES, Mr. DAVIS, Mr. PANETTA, Mr. FASCELL, Mr. SCHEUER, Mr. MANTON, Mr. MCDERMOTT, Ms. NORTON, and Mr. SAXTON.

The National Marine Sanctuary Program was created by Congress to protect and conserve distinct areas of ocean, coastal and Great Lakes waters recognized for their unique qualities. The Secretary of Commerce was given authority to evaluate discrete sites for designation as National Marine Sanctuaries and to develop and implement the management plan for each sanctuary, to preserve its vast resources.

In the early stages of the program, the National Oceanic and Atmospheric Administration [NOAA] drafted regulations to take on the task of site selection, evaluation, and designation of sanctuaries. The first two National Marine Sanctuary designations were accomplished in 1975; these were the U.S.S. *Monitor* off North Carolina and Key Largo, FL. In 1980, the Channel Islands National Marine Sanctuary off California was designated. Then in 1981, three more sanctuaries of varying size and characteristics were designated. These were located at Gray's Reef, GA; Looe Key, FL; and the Gulf of Farallones, CA.

For the better part of the 1980's the National Marine Sanctuary Program was at a standstill. Denied budget support by the past administration, those sanctuaries that were designated had few, if any, resources for management. Proposals for new sites were stifled.

It was not until the smallest of all existing sanctuaries—0.2 square nautical miles—in Fagatele Bay, American Samoa was designated in 1986 that it appeared there was any life left in the National Marine Sanctuary Program. Three years later, Cordell Bank, CA was designated.

In the first 17 years of the program, the administration's interest in the sanctuary program was minimal and neglectful. By the late 1980's, congressional interest intensified. Intervention by Congress propelled the final designations, in 1990 and 1991 respectively, of the Florida Keys and the Flower Garden Banks National Marine Sanctuaries.

Today, as we reexamine the history of the National Marine Sanctuary Program, the Congress will again intervene by statute to designate sanctuaries, because several of our colleagues are interested in finalizing the lengthy and tedious designation process where the merits of specific sites are clear and where these sites require immediate management consideration.

Slated for statutory designation are Stellwagen Bank, MA, a 600-square-mile area whale summering ground, and areas around the Hawaiian Islands amounting to 830 square miles, where humpback whales and various coral reef resources can be found. In addition, Monterey, CA, Olympic Coast, WA, and the Florida Keys may each be guided through designation to management by various directives and limitations on activities in the sanctuaries. Other provisions included in the substitute amendment offered today will require new studies or projects to improve the sanctuary program.

By the time the House has adopted H.R. 4310, with final designations of Stellwagen Bank, Monterey, and the Hawaiian Islands, the National Marine Sanctuary Program will cover twice the square mile area of the 10 sanctuaries designated from 1975 through 1991. With sanctuaries off Olympic Coast, WA; Northwest Straits, WA; Norfolk Canyon, VA; and Thunder Bay, MI undergoing evaluation for designation in the next 2 years, it is clearly time to reauthorize and improve upon the purposes and policies of the National Marine Sanctuary Program. In this process, we must be farsighted and willing to ensure that NOAA has adequate resources to carry out the missions that are delineated by statute. If Congress expects NOAA to develop and implement management plans through collaboration, cooperation, and consultation, with multiple-use objectives, authorized funding levels must be based on realistic program requirements.

LEGISLATIVE HISTORY

Mr. Speaker, allow me to summarize our legislative activity and the provisions of H.R. 4310. Let me also urge support by our colleagues for this worthwhile legislation.

In contemplation of reauthorization of the National Marine Sanctuary Program, the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf hosted two hearings jointly with the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

The first hearing was held on November 7, 1991. Several of our colleagues testified concerning the priorities of the National Marine Sanctuary Program: that for 1993 the administration should request $30 million to administer the program; that training must support effective managers interacting with local communities; that research and education must be integrated fully into the management plans; and that cooperation from local and nonprofit organizations in program operations should be encouraged. Administration witnesses recounted the progress of the program; and affected industry witnesses registered support, yet cautioned against statutory bans on activities in sanctuaries, such as oil and gas exploration. Environmental and conservation organization representatives testified about the necessity for additional funding to carry out program management plans effectively. An independent review team representative submitted an extensive report providing a scientific, economic, and environmental review of the program and recommendations for future action.

A second hearing on reauthorization of the National Marine Sanctuary Program was held on March 31, 1991, following introduction of H.R. 4310, and legislation by the chairman of the Fisheries and Wildlife Conservation and the Environment Subcommittee. In addition to administration witnesses, various environmental organizations, State government, ocean industries, and scientific representatives testified. Central to the discussions were the issues of the timeliness of sanctuary designations; the reach of regulations on permitted or licensed activities affecting sanctuary resources; local consultation in developing management plans; the continuation and limitation of multiple use management regulations; promotion of research, monitoring and education; international cooperation; the scientific bases for selecting new sites; and the adequacy of funds to carry out management of existing and new expansive sanctuary areas.

Following the hearings and discussion among subcommittee members, modifications to H.R. 4310 were suggested. These were incorporated into an amendment adopted at a joint subcommittee markup on May 12, 1992. On May 14, 1992, the Merchant Marine and Fisheries Committee marked up H.R. 4310, incorporating a technical amendment and an amendment by Chairman JONES relating to the artifacts of the U.S.S. *Monitor* National Marine Sanctuary.

On June 16, 1992, on behalf of the Merchant Marine and Fisheries Committee, I requested that the Rules Committee provide an open rule for consideration of H.R. 4310. House Resolution 488, providing an open rule for debate, was subsequently reported. Since that time, members of the Committee on Merchant Marine and Fisheries on both sides of the aisle have taken the opportunity to review amendments to be offered to H.R. 4310. Consensus on the substance of those amendments has allowed for the inclusion of these amendments as titles II and III of the substitute amendment brought before the House today. The text of title I is the same as reported by the House Merchant Marine and Fisheries Committee on June 15, 1992 (House Report 102–565). Given broad support for the substitute, consideration of H.R. 4310 under suspension of the rules provides the most expeditious and efficient procedure for adopting the bill.

DESCRIPTION OF PROVISIONS

With that brief history, allow me to outline the provisions of the bill beginning with title I.

Sections 1 through 3 of the bill refine the purposes and policies of the National Marine Sanctuary Program and clarify definitions in the Act. These sections include cultural qualities, international significance, and research as factors considered in designating a sanctuary. In addition protection of the natural assemblage of living resources and biogeographic representation can be considered in site selections.

In the revised purposes and policies of the act, sanctuaries will serve as models and incentives for conservation and management and to enhance living resources by providing places for species to survive and propagate. Sanctuaries will continue to allow for lawful public and private use of marine areas, and coordinated plans for conservation and management will include a variety of affected interests. New language in these sections promotes scientific research, long-term monitoring, and education. Cooperation in international programs for conserving marine resources is also encouraged.

Sections 4 through 6 amend designation procedures to allow for additional factors to be considered. The resource assessment that serves as a baseline for determining damages is amended under section 5 to include a report on past, present, or proposed disposal of materials or detonation of ordnance affecting a sanctuary.

Section 5 requires interagency cooperation and consultation with the Secretary of Commerce to determine if a permitted activity may potentially harm sanctuary resources.

These sections streamline the designation process by requiring less paperwork, a 60-day agency review of environmental impact statements, expanded and cooperative consultations in selecting sanctuaries and implementing management plans, and a brief annual progress report on program activities and requirements.

Sections 7, 8, and 11 define prohibited, unlawful activities in a sanctuary; establish enforcement procedures and penalties; describe how amounts recouped from damages or penalties may be collected, accrued, and spent; and clarify the limits of liability for loss of, or injury to sanctuary resources.

Sections 9, 10, and 13 will greatly enhance public awareness and participation in the National Marine Sanctuary Program. First, these sections promote education, research, and monitoring. Second, they allow new, supportive cooperative agreements, and financial arrangements, including the acceptance by the Secretary of tax-free donations, for use in meeting the management and operational goals of a sanctuary. Third, the Secretary is given direct authority to purchase or lease facilities, such as docks or visitors stations, necessary for routine sanctuary field operations. Fourth, the Secretary is allowed to enter into agreements for nonprofit organizations to so-

licit donations on behalf of the sanctuary program, thus obviating the need for a separate foundation as proposed in H.R. 4310 and H.R. 3694. Finally, the Secretary may establish advisory councils to assist in designation and management of a sanctuary.

Section 12 augments the authorization of funds for the Marine Sanctuary Program to $15 million in fiscal year 1993, with incremental increases of $5 million each year through 1996. Of these amounts, it is expected that 75 percent of the amounts provided will be used for onsite management and operations of designated sanctuaries. This new focus on management and operations is key to this reauthorization, recognizing that the number of designated sanctuaries has recently grown quite significantly. As a point of clarity, it is recognized that some activities that support on-site management may be more efficiently contracted through a central office and would not be charged against headquarters functions. However, the shift in focus from analysis to management remains.

Section 14 of the bill authorizes $800,000 for the acquisition of facilities for artifacts recovered from the graveyard of the Atlantic and for office space for the *Monitor* Marine Sanctuary.

Title II of the substitute amendment provides for the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary. This new sanctuary provides a management plan for protecting humpback whales and their delicate habitat, as well as ensuring the balance of multiuse in the designated area.

Title III includes in the substitute amendment a variety of important designations. First, section 31 designates the long delayed Stellwagen Bank National Marine Sanctuary off Massachusetts. Restrictions are placed on sand and gravel mining that could be detrimental to the area, and consultation on dredge disposal is required.

Second, section 32 requires issuance of a designation notice for the Monterey Bay National Marine Sanctuary by September 18, 1992, granting automatic designation if the deadline is not met. In addition, section 33 requires a study of San Luis Obispo, CA for purposes of determining whether it is an appropriate area for a sanctuary designation.

Section 34 establishes a 2-year pilot promotion project for sanctuaries that encourages sponsors and donations from the private sector.

Section 35 includes technical corrections recommended by the Law Revision Counsel to the 1972 Coastal Zone Management Act. These technical adjustments are nonsubstantive and will cure statutory references and omissions in the 1990 amendments.

Section 36 of the substitute amendment bolsters the Florida Keys National Marine Sanctuary Water Quality Program by increasing the authorization by $1 million. Section 37 provides for a coral reef research and management program unique to the Keys.

Finally, section 38 restricts oil and gas leasing and preleasing activities in the Olympic Coast National Marine Sanctuary.

VIEWS AND SUMMARY

The National Marine Sanctuary Program survived in very bleak years of budget austerity. Now, because the program is achieving a higher level of visibility and popularity, the committee agreed unanimously to increase the authorization and appropriation levels that support the program. During our discussions on reauthorization, recommendations of the National Marine Sanctuary Review Team were considered. Although the committee did not elect at this time to elevate the Marine Sanctuary Program to a separate program office within NOAA's National Ocean Service, this is a proposal that merits certain consideration in the next reauthorization cycle.

As initially introduced, I recommended $28 million in fiscal year 1993 for the National Marine Sanctuary Program with reasonable inflationary increases provided in subsequent years. This amount was justified by an analysis of requirements for site designation, management plan development and implementation, and operational resources based on the schedule of designations presented by the administration in 1991. This amount did not assume statutory designations of new sanctuaries or require their implementation ahead of that schedule.

In the course of committee deliberations, several Members advocated that $10 million would be adequate for the National Marine Sanctuary Program in 1993. Given the statutory mandates in this legislation, coupled with the size and total number of designated sanctuaries, it would be impossible to authorize less than the compromise amount of $15 million for fiscal year 1993 and expect the program to function. Anything less, in my opinion, would force NOAA to operate without sufficient resources, ultimately making the program ineffective, damaging its reputation, and undermining its potential for success.

As a final note, Mr. Speaker, I would hope that the reputation of the National Marine Sanctuary Program will be held in positive high regard and that the commitment of appropriations and resources made by the Congress will steadily grow to meet the size of that national trust we have designated.

I urge the support of our colleagues of H.R. 4310 and for the future of the National Marine Sanctuary Program.

The need for additional Marine Sanctuary Program funds is demonstrated best by the administration's acknowledgment that areas designated require more management and operations resources.

For example, the President's fiscal year 1993 budget request for the sanctuary program included a 46-percent increase over 1992 appropriations. Passbacks from the Department of Commerce indicate that $14 million—a 164-percent increase was initially requested for 1993; however, OMB scaled back the request to $7.3 million—the 46-percent increase.

The administration's reauthorization bill authorizes $7.3 million for fiscal year 1993 and "such sums as may be necessary" through 1996. Given the scope of expanded responsibilities and the dramatic increase in size of areas to be managed, the sums necessary to meet program requirements assume significant increases in the outyears.

The statement of administration policy [SAP] issued by OMB indicates that the administration supports House passage of H.R. 4310.

During the course of committee consideration of H.R. 4310, the 1993 authorization level was scaled back from $28 million to $15 million, a compromise that recognizes fiscal constraints. Only incremental increases were allowed for inflation and operating costs through 1996.

H.R. 4310 increases civil penalties that flow to the program. Additional damages collections are included in statutes directed for restoration and monitoring of sanctuary resources.

The committee provided statutory authority in three areas intended to enhance resources to the program: First, is direct statutory authority for donations to the Secretary of Commerce for sanctuaries; second, cooperative agreements with Federal, State, and local government agencies and nonprofit organizations are permitted for sanctuary management related activities; and third, the substitute provides for promotional arrangements that will hopefully provide private sector support to the program.

No funds were provided for over $65 million in capital expenditures and major equipment costs estimated as startup requirements for sanctuaries.

An independent review panel appointed by the administration projected costs of the Marine Sanctuary Program in upcoming years based on the current schedule of designations by NOAA. The amount estimated for on-going management, start-up costs at new sites, and continuing analyses, research and monitoring required by law was $50 million in 1994. H.R. 4310 authorizes $20 million in fiscal year 1994—less than half the amount recommended by the panel.

The Science and Technology Committee took the opportunity to review H.R. 4310 and provided the chairman with a letter of support for the bill as reported to committee. No changes were recommended to the bill.

Based on the current schedule of designations, the National Marine Sanctuary Program will in 1993 encompass an area twice the size as it did in 1992. Basic operations and management of these areas require at least the commitment of funds provided in H.R. 4310.

STATEMENT OF ADMINISTRATION POLICY

H.R. 4310—NATIONAL MARINE SANCTUARIES ACT AMENDMENTS

The Administration supports House passage of H.R. 4310, which would strengthen the marine sanctuaries program, with amendments to:

Delete the earmarking of funds in section 12. This provision would severely restrict other important activities, including designation of new sanctuaries and central management responsibilities.

Revise section 8(c)(3) to list the Exclusive Economic Zone (EEZ) of the United States as an area in which the marine sanctuaries program applies and is enforceable. This will clarify that marine sanctuaries located in whole or in part in the EEZ are covered.

Revise section 12, which authorizes appropriations for the marine sanctuaries program, to conform with the President's budget request of $7.3 million for FY 1993.

Delete provisions requiring grants for the acquisition of space in Hatteras Village. North Carolina. Funding specific activities or sanctuary operations does not recognize competing priorities within the national marine sanctuaries program.

The Administration opposes amendments that may be offered to H.R. 4310 designating

or regulating activities in individual marine sanctuaries. Those amendments would bypass congressionally-established administrative procedures concerning designation and management of sanctuaries.

Pay-as-You-Go Scoring

H.R. 4310 would increase receipts because it increases the maximum civil money penalty for violations of the law. It would also require a grant to be made and would authorize the acceptance of gifts and bequests. Therefore, H.R. 4310 is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990.

OMB's preliminary scoring estimates for this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If H.R. 4320 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be issued in monthly reports transmitted to the Congress.

ESTIMATES FOR PAY-AS-YOU-GO

[In millions of dollars]

	1992	1993	1994	1995	1996	1997	1992–97
Outlays	+(1)	+(1)	+(1)	+(1)	+(1)	+(1)	+(1)
Receipts	+(1)	+(1)	+(1)	+(1)	+(1)	+(1)	+(1)
Net Deficit: Increase (+) /decrease (−)	−(1)	+(1)	−(1)	−(1)	−(1)	−(1)	+(1)

[1] Less than $500,000.

Mr. DAVIS. Mr. Speaker, I am a strong advocate of the bill and the committee amendment supported by the Merchant Marine and Fisheries Committee. It combines the best of the bills authored by Chairman STUDDS and Chairman HERTEL, and adds several ideas from a bill submitted to Congress by President Bush last month. It is a truly bipartisan effort.

The amendments to the National Marine Sanctuary Program in H.R. 4310 will make designation of new sanctuaries easier and, once designated, will strengthen existing educational uses and provide greater protection of sanctuary resources. I am pleased that the proposed Thunder Bay sanctuary in Lake Huron—the first freshwater national marine sanctuary—will be able to take advantage of these improvements.

In addition, I thank Chairman HERTEL for including in the committee amendment a measure I authored which creates a pilot program to help increase funding for management of national marine sanctuaries.

My amendment authorizes the creation of a marine sanctuaries logo and initiates a pilot program that will allow solicitation of corporate sponsorship fees for use of that logo. It will allow for the designation of official sponsors of the marine sanctuary program, and the fees raised from official sponsors will go directly to the sanctuary program.

The amendment is written to ensure that the logo and sponsorship designation are used only in a manner consistent with the overall objectives of the sanctuary program. We do not want this pilot program to detract in any way from the high regard in which the sanctuary program is held. In addition, the amendment expressly prohibits sponsors from having any undue influence on sanctuary policy.

The best analogy, I believe, is to the United States Olympic Committee [USOC]. In the mid-1980's, in a search for increased revenues, the USOC developed an unprecedented sponsorship and licensing program. That program has progressed to the point where today 42 percent of the USOC's revenues—more than $125 million between 1988–92—comes from licensing and sponsorships.

I believe we can have similar success with the sanctuary program, and at the end of this pilot program we will know for sure. We are in an era of extraordinarily tight budgets, a time when we have no choice but to take innovative, creative steps. This amendment is such a step. I urge its adoption.

I look forward to quick passage of H.R. 4310 and the committee amendment.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 4310.

It is appropriate that the Congress take up a major reauthorization of this program during the year of its 20th anniversary. For many years, this program languished in administration indifference. Now, with renewed enthusiasm downtown and on the hill, the National Marine Sanctuary Program is finally coming into its own.

The committee is indebted to Mr. HERTEL for his enthusiasm and support for marine sanctuaries and for his leadership in bringing this bill before the house. Mr. STUDDS, Mr. DAVIS, and Mr. YOUNG have all shown great interest and leadership on this issue as well. Last, I would like to thank our colleagues LEON PANETTA and DANTE FASCELL, who are not committee members but who have been enthusiastic supporters of the program and strong advocates of marine resource protection in general.

The committee amendment before you enjoys strong bipartisan support from the Committee on Merchant Marine and Fisheries. The amendment strengthens the National Marine Sanctuary Program by clarifying and enhancing the purposes of the program and by providing NOAA with new authority to improve sanctuary management and to better protect sanctuary resources.

I urge my colleagues to support this legislation.

Mr. PANETTA. Mr. Speaker, I rise today in strong support of H.R. 4310, the National Marine Sanctuary Program Reauthorization and Improvement Act of 1992. I would like to commend Chairman JONES, Chairman HERTEL, and Chairman STUDDS for their diligent work on this legislation and thank them for their efforts on behalf of the Monterey Bay National Marine Sanctuary. The committee had made the Monterey Sanctuary designation a priority and its support has been invaluable.

The committee substitute contains two sections I authored to expedite the designation of the Monterey Sanctuary and require a study of Estero Bay in San Luis Obispo County, CA, for a possible national marine sanctuary designation.

Ensuring adequate protection for the Monterey Bay through a sanctuary designation has been one of my highest priorities since I was first elected to the Congress in 1976. The upcoming designation of the Monterey Sanctuary signals the final victory of a long, hard fought battle. With the support of this committee, we have overcome the resistance of two administrations and their attempts to stonewall a strong designation for Monterey Bay. After the Reagan administration effectively prohibited the designation of the Monterey Sanctuary through the administrative process, I introduced legislation to statutorily mandate the designation of the Monterey Sanctuary. This legislation was entered into law in 1988 and required the designation of the Monterey Sanctuary by the end of 1989.

Obviously, this designation is long overdue. Much of the delay associated with the Monterey site has been due to the national marine sanctuary program's unfortunate lack of resources. Many months have been lost however due to conflicts within the administration concerning the strength and effectiveness of the sanctuary designation. For example, in 1990 I engaged in a 6-month battle with the administration who refused to accept a proposed oil and gas ban for the Monterey Sanctuary. While we were eventually successful in securing this ban, valuable time was wasted deciding whether to allow oil and gas activities in a national marine sanctuary, a decision that never should have been an issue.

The National Oceanic and Atmospheric Administration [NOAA] released the final environmental impact statement/management plan—management plan—for the Monterey Sanctuary in June and I expect the final designation notice for Monterey will be released in mid-August. Unfortunately, there are not enough legislative days left in the session for the Congress to complete its review period of the designation notice prior to its adjournment in October. Section 32 of the legislation considered today would mandate the designation of the Monterey Bay National Marine Sanctuary by September 18, 1992—with the largest boundary alternative and an oil and gas prohibition—but would preserve the Congress and State of California's right to review and amend the rest of the Monterey Sanctuary regulations per section 304 of the Marine Protection, Resources and Sanctuaries Act [MPRSA].

It is important that the legislation protects Congress' right to amend the Monterey Sanctuary regulations as I have concerns with some of the regulations, as proposed. While I am generally supportive of the management plan's provisions, I object to the management plan's unconditional exemption of potential dredge disposal sites being considered as part of the San Francisco Bay Long-Term Management Strategy from regulation under the sanctuary regime.

NOAA's ability to regulate the discharge of substances from beyond the boundaries of the

Sanctuary is one of the management plans most important terms, section 944.5(a)(3). Boundaries drawn on a map do not necessarily protect Sanctuary resources from the potential harmful effects of activities beyond its borders. In NOAA's defense, I would say it is possible that, due to the depth of the disposal site and the nature of the material being disposed, this proposed disposal site will not harm sanctuary resources. However, it would be my opinion that such a finding would be best determined during the permit review process for the disposal site, not prior to its selection. Furthermore, I am concerned that this exemption may set a weak precedent of NOAA's regulation of dredge disposal sites in future sanctuaries. At a minimum, NOAA should retain the authority to consult with the other appropriate agencies regulating this site.

Second, I remain concerned with the regulation of vessel traffic in the Monterey Sanctuary. Although vessel traffic is in the scope of regulations, the proposed regulations do not regulate vessel traffic upon designation. In my comments on the management plan, I encouraged NOAA to work with the U.S. Coast Guard to devise commercial vessel traffic lanes that would steer vessel traffic outside of the most sensitive areas.

If the issues of dredge disposal and vessel traffic regulations are not adequately addressed in the final designation document for the Monterey Sanctuary, I reserve the right to object to those terms of designation and will seek legislation to amend these regulations so they provide strong, adequate protection to the Monterey Bay.

Section 33 of the legislation considered today is a provision I authored to direct NOAA to undertake a study of Estero Bay and adjacent marine environments in San Luis Obispo County, CA to determine if the area warrants a national marine sanctuary designation.

Earlier this year, I introduced legislation, H.R. 3099, to designate this area as a national marine sanctuary. Ideally, I would have liked to enact the San Luis Obispo designation as part of the program reauthorization. It does not appear, however, that enacting such legislation would be possible at this time. Realizing that, I have decided to pursue the San Luis Obispo designation through the enactment of this amendment.

Given the large variety of significant and sensitive marine resources in Estero Bay, I am confident the study will conclude that the area warrants a sanctuary designation. It is my hope that this study will provide us with the documentation needed to achieve that eventual designation.

I would also point out to my colleagues that in the interest of conserving NOAA's financial resources, my amendment requires that one-half of the study be funded by non-Federal sources.

It is my belief that the marine area of the central coast of California noted in this amendment possesses the ecological, historical, recreational, and educational qualities noted above which make it an area of national significance and a beneficial addition to the national marine sanctuary program.

This coastal area represents one of the most significant marine ecosystems along the Nation's west coast. It has a rich variety of sensitive coastal habitats including significant wetlands and estuaries as well as rocky intertidal zones and subtidal rocky reef communities. The area is home to many threatened and endangered species including the California sea otter, seven endangered species of whale, and four species of sea turtles, and is also a major feeding and resting area for migratory birds protected under international treaties.

Mr. Chairman, Estero Bay is an important, significant, and sensitive marine resource worthy of consideration for inclusion in the national marine sanctuary program. I urge my colleagues to aid this effort and to ensure the timely designation of the Monterey Bay National Marine Sanctuary by supporting this legislation.

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 4310, the National Marine Sanctuaries Reauthorization and Improvement Act. Through hard work the committee has produced legislation that is a good compromise and will enhance the success of the program.

The National Marine Sanctuaries Program protects our vital marine resources from degradation, provides important natural research laboratories, and helps educate the public concerning the coastal oceans, as well as provides recreational opportunities.

I am particularly pleased that the legislation increases the authorization level of the program. This increase is crucial if the program is to meet its goal of sustaining, conserving and replenishing the natural and functional diversity of significant and ecologically representative marine areas.

I am also pleased that the legislation streamlines the designation process, broadens the criteria for designation and strengthens enforcement.

Further, the management of marine sanctuaries is a particularly difficult task as we must balance economic considerations with recreational and conservational uses. This bill goes a long way to achieving this balance.

The National Marine Sanctuaries Reauthorization bill will enhance the program's ability to maintain the health and integrity of a variety of ecosystems in our coastal, ocean and Great Lakes regions.

I offer my strongest support for its passage and urge my colleagues to do the same.

Mrs. MINK. Mr. Speaker, I rise today in strong support of H.R. 4310, legislation to reauthorize and improve the National Marine Sanctuaries Program.

Since 1972, when Congress passed the National Marine Protection, Research, and Sanctuaries Act, this valuable program has undertaken a formidable task—the protection of special areas of the marine environment for conservation and multiple use. And it has done this despite the fact that like so many other Federal programs, it received a low priority throughout the 1980's. In fact, the administration's support was so meager through these years that the policies and purpose of the enacting legislation were threatened because such limited resources were made available to carry them out.

I am truly gratified to see the Congress acting to give the Marine Sanctuaries Program the funding it needs to fulfill its mission.

In my home State of Hawaii we are well aware that effective marine conservation is an essential building block of our economy and our future. Without it, we risk losing the fishing and tourism industries that have served so well and so long as our economic foundation. The sanctuaries program is a solid contributor to the goal of dependable marine conservation, and it should be improved and expanded.

This legislation is also particularly important for my district because it includes the National Humpback Whale Marine Sanctuary in Hawaiian waters. The humpback whale is on the endangered species list and its population is declining. The new sanctuary in the waters surrounding the island of Kahoolawe, and adjacent to the islands of Maui, Molokai, and Lanai, will protect the breeding, calving, and nursing areas of these beautiful creatures.

My only regret about this bill is that in designating the Humpback Whale Marine Sanctuary we have not included the waters around the island of Kauai. We know well that the humpback whales live and frolic under the watchful eye of the national wildlife refuge at Kilauea Point. The bill is deficient in that we don't include this region. I also would like to someday see the sanctuary expanded to include other species of marine life.

For too long we have neglected the magnificent animals in our oceans, and it is imperative that we reverse the trend. H.R. 4310 does this and more; it is with great enthusiasm that I join my colleagues in support of this legislation.

Mr. LANCASTER. Mr. Speaker, I rise in strong support of the National Marine Sanctuaries Reauthorization Act of 1992. I would like to particularly address my colleagues' favorable attention to section 14 of the bill, which authorizes the Secretary to make a grant for the acquisition of appropriate facilities for display and interpretation of the artifacts recovered from the Graveyard of the Atlantic off Cape Hatteras, NC.

The location of such a museum at Hatteras, NC, would be beneficial to the local economy and a great honor to the local people, many of whom are direct descendents of shipwreck survivors whose vessels went down in storms and battles and pirate raids in the Graveyard of the Atlantic. Others manned the life saving stations—later Coast Guard Stations—that protected the lives of those whose ships perished in these treacherous waters. No location would be more appropriate, and no

location would better enhance the historical significance of these artifacts from ships that sailed during the formative years of our Nation.

Mr. Speaker, I commend my fellow members of the Committee on Merchant Marine and Fisheries, especially Chairman WALTER JONES, for their hard work and good judgment in this bipartisan effort to improve our National Marine Sanctuaries program and to preserve and enhance or priceless marine heritage and resources.

Mr. STUDDS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the House suspend the rules and pass the bill, H.R. 4310, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to reauthorize and improve the national marine sanctuaries program, and for other purposes.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. STUDDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

FAA CIVIL PENALTY ADMINISTRATIVE ASSESSMENT ACT OF 1992

Mr. OBERSTAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5481) to amend the Federal Aviation Act of 1958 relating to administrative assessment of civil penalties, as amended.

The Clerk read as follows:

H.R. 5481

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "FAA Civil Penalty Administrative Assessment Act of 1992".

SEC. 2. ADMINISTRATIVE ASSESSMENT.

(a) IN GENERAL.—Section 901(a)(3) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(3)) is amended to read as follows:

"(3) ADMINISTRATIVE ASSESSMENT.—

"(A) GENERAL AUTHORITY.—Upon written notice and finding of a violation by the Administrator, the Administrator or the delegate of the Administrator, may assess a civil penalty for a violation of title III, V, VI, or XII or section 1101 or 1115(e)(2)(B) or any rule, regulation, or order issued thereunder.

"(B) NO REEXAMINATION OF LIABILITY OR AMOUNT.—In the case of a civil penalty assessed by the Administrator under this paragraph, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"(C) CONTINUING JURISDICTION OF DISTRICT COURTS.—Notwithstanding subparagraph (A), the United States district courts shall have exclusive jurisdiction of any civil penalty initiated by the Administrator—

"(i) which involves an amount in controversy in excess of $50,000;

"(ii) which is an in rem action or in which an in rem action based on the same violation has been brought;

"(iii) regarding which an aircraft subject to lien has been seized by the United States; and

"(iv) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"(D) PROCEDURES WITH RESPECT TO VIOLATIONS BY PILOTS, FLIGHT ENGINEERS, MECHANICS, AND REPAIRMEN.—

"(i) NOTICE OF CHARGES.—Before issuing an order assessing a civil penalty under this paragraph against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, the Administrator shall advise such person of the charges or any reasons relied upon by the Administrator for the proposed action and shall provide such person an opportunity to answer any charges and be heard as to why such order should not be issued.

"(ii) APPEAL TO NTSB.—Any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman against whom an order assessing a civil penalty is issued by the Administrator under this paragraph may appeal the order to the National Transportation Safety Board, and the Board shall, after notice and a hearing on the record in accordance with section 554 of title 5, United States Code, affirm, modify, or reverse the order of the Administrator.

"(iii) WEIGHT AFFORDED TO FINDINGS AND INTERPRETATIONS OF FAA.—In the conduct of its hearings under this subparagraph, the National Transportation Safety Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify the type of sanctions to be imposed from assessment of a civil penalty to suspension or revocation of a certificate.

"(iv) EFFECT OF FILING OF APPEAL.—The filing of an appeal of an order of the Administrator with the National Transportation Safety Board under this subparagraph shall stay the effectiveness of the order.

"(v) JUDICIAL REVIEW.—A person substantially affected by an order of the National Transportation Safety Board under this subparagraph or the Administrator, in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this clause. In any such proceedings, the findings of fact of the Board shall be conclusive if supported by substantial evidence.

"(E) PROCEDURES WITH RESPECT TO VIOLATIONS BY OTHER PERSONS.—

"(i) GENERAL PROCEDURES.—A civil penalty may be assessed against any person (other than a person acting in the capacity of a pilot, flight engineer, mechanic or repairman) by the Administrator under this paragraph only after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

"(ii) STANDARD OF REVIEW.—In any appeal from a decision of an administrative law judge, the Administrator shall consider only the following issues:

"(I) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence.

"(II) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

"(III) Whether the administrative law judge committed any prejudicial errors that support the appeal.

"(iii) TIME FOR COMMENCING PROCEEDING.—Except where good cause exists, a civil penalty action shall not be initiated under this subparagraph after 2 years from the date the violation occurred.

"(F) LIMITATION ON APPLICABILITY.—This paragraph only applies to violations occurring on or after the date of the enactment of the FAA Civil Penalty Administrative Assessment act of 1992.

"(G) MAXIMUM AMOUNT.—The maximum amount of a civil penalty which may be assessed by the Administrator or the National Transportation Safety Board under this paragraph may not exceed $50,000.

"(H) DEFINITIONS.—In this paragraph, the following definitions apply:

"(i) FLIGHT ENGINEER.—The term 'flight engineer' means a person who holds a flight engineer certificate issued under part 63 of title 14 of the Code of Federal Regulations.

"(ii) MECHANIC.—The term 'mechanic' means a person who holds a mechanic certificate issued under part 65 of title 14 of the Code of Federal Regulations.

"(iii) PILOT.—The term 'pilot' means a person who holds a pilot certificate issued under part 61 of title 14 of the Code of Federal Regulations.

"(iv) REPAIRMEN.—The term 'repairman' means a person who holds a repairman certificate issued under part 65 of title 14 of the Code of Federal Regulations.".

(b) REPEAL OF DEMONSTRATION PROGRAM.—Section 905 of such Act (49 U.S.C. App. 1475) is repealed.

(c) CONTINUATION OF FORMER PROGRAMS WITH RESPECT TO PREENACTMENT VIOLATIONS.—Notwithstanding subsections (a) and (b) of this section, sections 901(a)(3) and 905 of the Federal Aviation Act of 1958 as in effect on July 31, 1992, shall continue in effect on and after such date of enactment with respect to violations of the Federal Aviation Act of 1958 occurring before such date of enactment.

SEC. 3. CONFORMING AMENDMENTS TO REVOCATION OF CERTIFICATES PROCEDURE.

(a) GENERAL AUTHORITY.—Section 609(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429(a)) is amended—

(1) by striking the fifth sentence and inserting the following: "In the conduct of its hearings under this subsection, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under

this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify the type of sanction to be imposed from suspension or revocation of a certificate to assessment of a civil penalty."; and

(2) by striking the last sentence and inserting the following: "A person substantially affected by an order of the Board under this subsection, or the Administrator in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this subsection. In any such proceeding, the findings of fact of fact of the Board shall be conclusive if supported by substantial evidence.".

(b) CONTROLLED SUBSTANCE ACTIVITIES.—Section 609(c)(3) of such Act is amended—

(1) by striking the third sentence and inserting the following: "In the conduct of its hearings under this paragraph, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law."; and

(2) by striking the last sentence and inserting the following: "A person substantially affected by an order of the Board under this paragraph, or the Administrator in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this paragraph. In any such proceeding, the findings of fact of the Board shall be conclusive if supported by substantial evidence.".

SEC. 4 CONFORMING AMENDMENT TO ISSUANCE OF CERTIFICATE PROCEDURE.

Section 602(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1422(b)(1)) is amended by inserting "but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law" after "findings of fact of the Administrator.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota [Mr. OBERSTAR] will be recognized for 20 minutes, and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. OBERSTAR].

GENERAL LEAVE

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

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The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Speaker, H.R. 5481 would permanently reauthorize FAA's authority to assess civil penalties for violations of Federal aviation regulations. Congress first approved this authority for the FAA in 1987 on an experimental basis and twice approved temporary extensions of that authority. This legislation will fix civil penalty authority permanently in statutory law. Civil penalty authority is used quite commonly throughout the executive branch by a number of agencies which administer more than 200 civil penalty statutes similar to this one. Civil penalties in the field of aviation are an important tool in promoting aviation safety and security.

One important example of how the FAA has effectively used its civil penalty authorities in the area of airline security, which represents 32 percent of all the penalty cases in the air carrier security program under this initiative are tested by FAA employees who try to slip through air carrier x-ray machines and metal detectors simulated weapons. Since 1988 the policy of the FAA has been to seek a civil penalty whenever an airline failed to detect one of those test objects. The airlines have been quite vocal in the opposition to the use of civil penalties to enforce security compliance, yet the record clearly shows that there is no denying that carrier detection rates have improved by almost 20 percentage points, from 76 percent to 95 percent, when our strict security enforcement policy was backed up with swift and effective adjudication.

Although security is the most obvious example of the civil penalty program, the record shows generally that swift and sure enforcement serves as a detriment to potential violators in other areas of aviation as well. Small civil penalty cases ought to be handled by the FAA rather than by the Federal courts. We first made that observation and determination and gave the FAA civil penalty authority in 1977 because we found that the U.S. District Courts, which previously held the civil penalty authority, and U.S. attorneys were overburdened and cannot give adequate attention to the relatively small civil penalty cases which began to backlog and build up in large numbers. The FAA has administered the civil penalty program efficiently and fairly. The Administrative Conference of the United States [ACUS] commissioned a study of the FAA civil penalty program, which was conducted by Professor Perritt, a professor at Villanova University Law School. ACUS endorsed the conclusion of Professor Perritt that there was "no evidence of actual unfairness or mishandling of cases resulting from commingling prosecutorial and judging functions under the present system." Indeed, in 32 percent of cases which an independent ALJ decided in favor of the FAA prosecutors, the FAA Administrator reversed the ALJ's decision.

That this bill comes before the House on the Suspension Calendar which is normally reserved for relatively noncontroversial legislation, Mr. Speaker, belies both the complexity of the issues covered by the law and the controversy attending the implementation of civil penalties, as evidenced by the several hearings the subcommittee has held on the subject, the complex and often contentious markups in subcommittee and full committee. But the bill now before us makes adjustments in the program to accommodate concerns raised by aviation groups. With these changes, Mr. Speaker, the organizations representing airline pilots, airline mechanics, general aviation pilots and the airlines themselves now support the bill.

□ 1650

In other words, it has not been easy getting to this point.

As recommended by ACUS, the bill gives pilots and flight engineers the right to appeal civil penalties to the National Transportation Safety Board. The bill also meets concerns raised by the airlines by continuing the provisions in existing law that limit PAA's penalty authority to only those penalties of under $50,000. In larger cases, airlines and other respondents will continue to have the right to a judicial hearing before a civil penalty is imposed.

The bill also includes amendments which will incorporate into the statute two provisions now in FAA rules. The first of these establishes the standards by which the Administrator will review decisions of an ALJ. Under this provision, the Administrator in reviewing an ALJ decision shall consider: First, whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence; second, whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and, third, whether the administrative law judge committed any prejudicial errors that support the appeal.

The second establishes a statute of limitations for bringing civil penalty proceedings of 2 years from the date the violation occurred.

The majority of cases remaining in the program are security cases against individuals, carriers, and airports. It is important that the FAA retain these cases since the National Transportation Safety Board does not have any expertise in security matters.

Mr. Speaker, I want to take this opportunity to express my appreciation to the ranking member of the subcommittee, the gentleman from Pennsylvania [Mr. CLINGER], and the rank-

ing member of the full committee, the gentleman from Arkansas [Mr. HAMMERSCHMIDT], who have labored mightly throughout many long weeks to bring about the compromise that results in the legislation today and results in our being able to bring this bill under suspension rather than on an open rule, where I am sure we would have had a very long debate had the principal issues not been ironed out as they have been beforehand.

Mr. Speaker, I also want to express my appreciation to Secretary of Transportation Card and to the FAA, to Administrator Tom Richards and General Counsel Quinn, who have devoted a great deal of their time, many, many hours of time and debate and discussion, in ironing out these problems and bringing us to a program that I really believe is going to be effective and workable.

Mr. Speaker, I reserve the balance of my time.

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when we first authorized the Civil Penalty Demonstration Program 5 years ago, we did not fully appreciate the storm of controversy it would create. At that time, we were mainly concerned about the inefficiency of forcing the FAA to work through the U.S. Attorney's Office every time it wanted to impose a fine.

The civil penalty program we adopted allowed the FAA to prosecute small civil penalties itself, without having to go into court. Because it was a new program, we authorized it for only a 2-year trial period to see how it would work.

In fact, it turned out to be very controversial. Airlines and pilots strongly opposed it and sought its termination or at least substantial modifications.

To address the concerns that had been raised, we extended the program and asked for a study by the administrative conference. The administrative conference is the expert on these sorts of questions involving administrative law and procedure.

The administrative conference completed the study last January and filed its report. It is a very extensive and scholarly piece of work and the conference is to be commended for the job it has done.

The report makes a number of recommendations, most of which tend to vindicate the FAA's handling of the program. However, it did include one recommendation that is controversial. That is, the recommendation that only cases involving pilots and flight engineers should be transferred to the NTSB.

Our aviation subcommittee held an extensive hearing on this subject where it heard the arguments of the pilots, the airlines, and the FAA. The issues were fully considered during markups in both the Aviation Subcommittee and the Public Works and Transportation Committee.

On balance, we concluded that the recommendation of the administrative conference is the correct approach. The conference is the expert on this sort of issue and it favored transferring only the pilot and flight engineer cases from the FAA to the NTSB.

However, we have modified this legislation somewhat in order to achieve enough support for passage. In committee, cases involving mechanics were added to those being transferred to the Safety Board.

In addition, the bill now retains the $50,000 cap on the penalty that can be assessed under this program. It also contains a 2-year statute of limitations and some restrictions on the FAA's ability to reverse the decision of an administrative law judge. But in most other respects, we have tried to follow the recommendations of the administrative conference.

One technical item requires some clarification. It concerns the Safety Board's review of FAA findings of fact and interpretation.

In the civil penalty cases for which it is responsible, the Safety Board is not required to accept the FAA's view of the facts of the case. On the other hand, it is bound to accept FAA's interpretation of its laws, regulations, and sanction policies that apply to the case.

I would like to make clear however, that if the Board finds that FAA is interpreting its laws and regulations, or implementing its sanction guidelines, in an arbitrary or capricious manner, then the Board is not obliged to follow the FAA's approach.

Mr. Speaker, this legislation had been very controversial. But I believe we have worked out the main differences now.

This bill will help avoid the potential for forum shopping and conflicts of interest on the part of the FAA. And most importantly, it will enhance safety by streamlining FAA enforcement and ensure fairness by giving the NTSB an important role to play in the process.

I would like to commend the chairman of the subcommittee, Mr. OBERSTAR, as well as the subcommittee ranking minority member, Mr. CLINGER, for their diligent efforts to bring the bill to the floor. I would also like to thank the chairman of the committee for expediting the measure through committee.

Therefore, I support the approach to the FAA's civil penalty program that is taken by this bill. I urge the House to support it as well.

Mr. OBERSTAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to concur in the several observations and interpretations of the provisions of the bill as offered by the gentleman from Arkansas [Mr. HAMMERSCHMIDT]. I think our two statements round out and complete the interpretation of this very complex legislation.

Mr. Speaker, in closing I would like to further express appreciation to Deputy Secretary of Transportation Arthur Rothkopf, who has been in communication with us almost on a daily basis and given a great deal of his personal time to resolving many of these thorny and complex subjects, and to our colleagues on the subcommittee, the gentleman from North Carolina [Mr. VALENTINE] and the gentleman from Oklahoma [Mr. INHOFE], both of whom have had a very keen interest and have helped us work our way through some of the complexities of the bill on the policy side.

Mr. Speaker, I would like to express a very special appreciation for diligent and undying effort and commitment to professionalism to our staff, Mary Walsh, who bore the heat of the day on this issue, and David Heymsfeld, Charlie Ziegler, and David Schaeffer, all four of whom are probably very happy to see this bill passed on to the other body.

Mr. MCEWEN. I would like to take just a moment to commend the efforts of the distinguished chairman of the Aviation Subcommittee, Mr. OBERSTAR of Minnesota, and the ranking member, Mr. CLINGER of Pennsylvania, for bringing this important legislation to the floor of the House today. I would also like to express my personal thanks to my colleague from Oklahoma, Mr. INHOFE, and the gentleman from North Carolina, Mr. VALENTINE, for their efforts to include the transfer of appeals of all certificate cases from the FAA to the National Transportation Safety Administration.

As you may know, I recently introduced legislation, H.R. 5384, to transfer the appeal of civil penalties against any airman or air carrier to the NTSB. Thus, I am very pleased that the final legislation transfers to the NTSB cases involving pilots, flight engineers, mechanics and repairmen. This provision is a significant step forward, and I again commend the work of the chairman to address this issue here today.

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OBERSTAR. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Minnesota [Mr. OBERSTAR] that the House suspend the rules and pass the bill, H.R. 5481, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5517. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992, and for other purposes, and

H.R. 5678. An act making appropriations for the Departments of Commerce, Justice and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5517) "An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1993, and for other purposes", requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. BOND, Mr. GORTON and Mr. HATFIELD, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5678) "An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes", requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HOLLINGS, Mr. INOUYE, Mr. BUMPERS, Mr. LAUTENBERG, Mr. SASSER, Mr. ADAMS, Mr. BYRD, Mr. RUDMAN, Mr. STEVENS, Mr. HATFIELD, Mr. KASTEN, and Mr GRAMM to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2624. An act to authorize appropriations for the Interagency Council on the Homeless, the Federal Emergency Management Food and Shelter Program, and for other purposes.

□ 1700

JUVENILE JUSTICE AND DELINQUENCY PREVENTION AMENDMENTS OF 1992

Mr. MARTINEZ. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5194) to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5194

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Juvenile Justice and Delinquency Prevention Amendments of 1992".

TITLE I—AMENDMENTS TO THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

SEC. 101. PURPOSE.

Section 102(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5602(b)) is amended—

(1) by striking "and (4)" and inserting "(4)", and

(2) by inserting before the period at the end the following:

"; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of services between State, local, and community-based agencies and to promote interagency cooperation in providing such services".

SEC. 102. DEFINITIONS.

Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—

(1) by amending paragraph (16) to read as follows:

"(16) the term 'valid court order' means a court order given by a juvenile court judge to a juvenile—

"(A) who was brought before the court and made subject to such order;

"(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

"(C) with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

"(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

"(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

"(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

"(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);",

(2) in paragraph (17) by striking "and" at the end,

(3) in paragraph (18) by striking the period at the end and inserting a semicolon, and

(4) by adding at the end the following:

"(19) the term 'comprehensive and coordinated system of services' means a system that—

"(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

"(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

"(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

"(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

"(20) the term 'gender-specific services' means services designed to address needs unique to the gender of the individual to whom such services are provided;

"(21) the term 'hate crime' means an offense that manifests evidence of prejudice based on race, religion, sexual orientation, or ethnicity;

"(22) the term 'home-based alternative services' means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention; and

"(23) the term 'jail or lockup for adults' means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

"(i) pending the filing of a charge of violating a criminal law;

"(ii) awaiting trial on a criminal charge; or

"(iii) convicted of violating a criminal law.".

SEC. 103. ESTABLISHMENT OF OFFICE.

Section 201(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611(b)) is amended—

(1) in the first sentence by striking "in juvenile justice programs" and inserting "as practitioners in the field of juvenile justice", and

(2) by striking the last sentence and inserting the following:

"There shall be a direct reporting relationship between the Administrator and the Attorney General. In the performance of the functions of the Administrator, the Administrator shall be directly responsible to the Attorney General. The Attorney General may not delegate any power, duty, or function vested under this title or title II in the Attorney General.".

SEC. 104. CONCENTRATION OF EFFORT.

(a) FUNCTIONS OF ADMINISTRATOR.—Section 204(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after "(a)", and

(B) by striking "implement overall policy and develop objectives and priorities" and inserting "develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan,", and

(2) by adding at the end the following:

"(2)(A) Such plan shall—

"(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this title;

"(ii) provide for coordinating the administration programs and activities under this title with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

"(B) The Administrator shall review such plan annually, revise such plan as the Administrator considers appropriate, and publish such plan in the Federal Register—

"(i) not later than 240 days after the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, in the case of the initial plan required by paragraph (1); and

"(ii) except as provided in clause (i), in the 30-day period ending on October 1 of each year.".

(b) DUTIES.—Section 204(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614(b)) is amended—

(1) in paragraph (5) by striking "and" at the end,

(2) in paragraph (6) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(7) not later than 1 year after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, issue model standards for providing health care to incarcerated juveniles.".

(c) REPEALER.—Section 204 the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended by striking subsections (f) and (g).

SEC. 105. COORDINATING COUNCIL.

Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "the Director of the Office of Community Services" and all that follows through the period, and inserting the following:

"the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of Drug Abuse Policy, the Director of the ACTION Agency, and individuals appointed under paragraph (2).", and

(B) by amending paragraph (2) to read as follows:

"(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

"(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

"(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

"(iii) Three members shall be appointed by the President.

"(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

"(I) 1 shall be appointed for a term of 1 year;

"(II) 1 shall be appointed for a term of 2 years; and

"(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

"(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

"(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.",

(2) in subsection (c)—

(A) by inserting "(1)" after "(c)",

(B) in the second sentence by inserting "shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and" after "Council"

(C) by adding at the end thereof the following:

"(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) shall collectively—

"(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section 204(a)(1); and

"(B) not later than 180 days after the date of the enactment of the Juvenile Justice and Delinquency Prevention Act of 1992, submit such recommendations to the Administrator, the Chairman of the Committee on Education and Labor of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate.", and

(3) in subsection (f)—

(A) by inserting after "(f)" the following:

"Members appointed under subsection (a)(2) shall serve without compensation.", and

(B) by striking "who are employed by the Federal Government full time".

SEC. 106. ANNUAL REPORT.

Section 207(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5617(1) is amended—

(1) in subparagraph (D)—

(A) by inserting "(including juveniles treated as adults for purposes of prosecution)" after "juveniles", and

(B) by striking "and" at the end,

(2) in subparagraph (E) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(F) the educational status of juveniles, including information relating to learning disabilities, failing performance, grade retention, and dropping out of school.".

SEC. 107. ALLOCATION.

The first sentence of section 222(c) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632(c)) is amended by striking "and evaluation" and inserting ", evaluation, and one full-time staff position".

SEC. 108. STATE PLAN.

(a) PLAN REQUIREMENTS.—Section 223(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(a)) is amended—

(1) in paragraph (3)(B) by inserting "recreation," after "special education,",

(2) in paragraph (8)(A) by inserting "(including educational needs)" after "delinquency prevention needs" each place it appears,

(3) in paragraph (9) by inserting "recreation," after "special education,"

(4) in paragraph (10)—

(A) in subparagraph (A) by inserting "(including home-based alternative services)" after "services" the first place it appears,

(B) by amending subparagraph (B) to read as follows:

"(B) community-based programs and services designed to work with—

"(i) parents and other family members to maintain and strengthen the family unit so that juveniles may be retained in their homes; and

"(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the family unit;"

(C) in subparagraph (C)—

(i) by striking "youth" the second and third places it appears and inserting "juveniles", and

(ii) by striking "delinquents" and inserting "delinquent juveniles",

(D) in subparagraph (D) by striking "youth" and inserting "juveniles",

(E) by amending subparagraph (E) to read as follows:

"(E) educational programs and supportive services designed—

"(i) to encourage delinquent juveniles and other juveniles to remain in elementary and secondary schools or in alternative learning situations, including programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

"(ii) enhance coordination with the local schools such juveniles would otherwise attend, to ensure that—

"(I) the instruction such juveniles receive outside such schools is closely aligned with the instruction provided in such schools; and

"(II) information regarding any learning problems identified in such alternative learning situations are communicated to such schools;",

(F) in subparagraph (F) by striking "youth" and inserting "juveniles",

(G) in subparagraph (G)—

(i) by striking "youth" each place it appears and inserting "juveniles", and

(ii) by inserting "(including juveniles with limited-English speaking ability)" before "who",

(H) in subparagraph (H)—

(i) in clause (iv) by inserting "(including home-based treatment programs)" after "facilities", and

(ii) in clause (v) by inserting before the semicolon at the end the following:

", with special emphasis on involving parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability",

(I) in subparagraph (I) by striking "learning disabled and other handicapped juveniles" and inserting "juveniles who are learning disabled or otherwise handicapped or who have educational problems",

(J) in subparagraph (K) by striking "and" at the end,

(K) by adding at the end the following:

"(M) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of the family unit; and

"(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration;",

(5) in paragraph (12)(B)(i) by striking "child" and inserting "juvenile",

(6) in paragraph (13)—

(A) by striking "youths" and inserting "juveniles",

(B) by striking "regular", and

(C) by inserting before the semicolon at the end "or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults",

(7) in paragraph (14) by striking "provide that" and all that follows through "1980.",

(8) in paragraph (17)—

(A) by striking "and other youth" and inserting "juveniles and other juveniles",

(B) by striking ". Such" and inserting "(such", and

(C) by inserting before the semicolon the following:

"and should include providing family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)",

(9) in paragraph (19) by striking "this Act" each place it appears and inserting "this title",

(10) by redesignating paragraph (24) as paragraph (28),

(11) in paragraph (23) by striking "and" at the end,

(12) by redesignating paragraphs (9) through (23) as paragraphs (12) through (26), respectively,

(13) by inserting after paragraph (8) the following:

"(9) contain—

"(A) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

"(B) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

"(10) contain—

"(A) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services ; and

"(B) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas;

"(11) contain—

"(A) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(B) a plan for providing needed mental health services to juveniles in the juvenile justice system;", and

(14) by inserting after paragraph (26), as so redesignated, the following:

"(27) provide an assurance that if the State receives under section 222 for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 1992, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services; and".

(b) APPROVAL OF PLAN; REDUCTION OR TERMINATION OF FUNDS.—Section 223(c) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)) is amended to read as follows:

"(c)(1) Subject to paragraph (2), the Administrator shall approve any State plan, and any modification thereof, that meets the requirements of this section.

"(2) If a State fails to comply with the requirements of paragraph (12)(A), (13), (14), or (23) in any fiscal year beginning after January 1, 1993, then—

"(A) subject to subparagraph (B), the amount allotted under section 222 to the State for such fiscal year shall be reduced by 25 percent for each such paragraph with respect which to noncompliance occurs; and

"(B) the State shall be ineligible to receive any allotment under such section for such fiscal year unless—

"(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with subsections (c) and (d) of section 222 and with section 223(a)(5)(C)) for such fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

"(ii) the Administrator determines, in the discretion of the Administrator, that the State has—

"(I) achieved substantial compliance with each such paragraph with respect to which the State is in noncompliance; and

"(II) made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time.".

(c) LACK OF APPROVED STATE PLAN.—Section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(d)) is amended—

(1) in the first sentence—

(A) by inserting ", excluding funds the Administrator shall make available to satisfy the requirement specified in section 222(d)," after "section 222(a)", and

(B) by striking "the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14)" and inserting "activities of the kinds described in paragraphs (12)(A), (13), (14), and (23) of subsection (a)", and

(2) in the last sentence by striking "under subsection" and all that follows through "subsection (a)(13)", and inserting the following: "of paragraphs (12)(A), (13), (14), and (23)".

SEC. 109. INFORMATION FUNCTION.

Section 242(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5652(3)) is amended by inserting "(including drug and alcohol programs and gender-specific programs)" after "treatment programs".

SEC. 110. RESEARCH, DEMONSTRATION, AND EVALUATION FUNCTIONS.

Section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5663) is amended—

(1) by striking "The" and inserting "(a) The",

(2) in paragraph (8) by striking "and" at the end,

(3) in paragraph (9) by striking the period at the end and inserting a semicolon, and

(4) by adding at the end the following:

"(10) support research related to achieving a better understanding of the commission of hate crimes by juveniles and designed to identify educational programs best suited to prevent and reduce the incidence of hate crimes committed by juveniles; and

"(11) routinely collect, analyze, compile, publish, and disseminate uniform national statistics concerning—

"(A) all aspects of juveniles as victims and offenders;

"(B) the processing and treatment, in the juvenile justice system, of juveniles who are status offenders, delinquent, neglected, or abused; and

"(C) the processing and treatment of such juveniles who are treated as adults for purposes of the criminal justice system.

"(b) The Administrator shall make available to the public—

"(1) the results of evaluations and research and demonstration activities referred to in subsection (a)(6); and

"(2) the data and studies referred to in subsection (a)(7);

that the Administrator is authorized to disseminate under subsection (a).".

SEC. 111. TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS.

Section 244 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5654) is amended—

(1) in paragraph (2) by inserting "(including juveniles who commit hate crimes)" after "offenders",

(2) in paragraph (3) by striking "and" at the end,

(3) in paragraph (4) by striking the period at the end and inserting "; and", and

(4) by adding at the end the following:

"(5) provide technical assistance and training to assist States and units of general local government to adopt the model standards issued under section 204(b)(7).".

SEC. 112. ESTABLISHMENT OF TRAINING PROGRAM.

The first sentence of section 245 is amended by inserting before the period at the end the following: ", including methods and techniques specifically designed to prevent and reduce the incidence of hate crimes committed by juveniles".

SEC. 113. CURRICULUM FOR TRAINING PROGRAM.

Section 246 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5660) is amended by inserting before the period at the end the following: "and shall include training designed to prevent juveniles from committing hate crimes".

SEC. 114. SPECIAL STUDIES AND REPORTS.

Section 248 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5662) is amended by adding at the end the following:

"(d)(1) Not later than 180 days after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the Administrator shall begin to conduct a study of the incidence of violence committed by or against juveniles in urban and rural areas in the United States.

"(2) Such areas shall include—

"(A) the District of Columbia;

"(B) Los Angeles, California;

"(C) Milwaukee, Wisconsin; and

"(D) such other cities as the Administrator determines to be appropriate.

"(3) With respect to each area included in the study, the objectives of the study shall be—

"(A) to identify characteristics and patterns of behavior of juveniles who are at risk of becoming violent or victims of homicide;

"(B) to identify factors particularly indigenous to such area that contribute to violence committed by or against juveniles;

"(C) to determine the accessibility of firearms and the use of firearms by or against juveniles;

"(D) to determine the conditions that cause any increase in violence committed by or against juveniles;

"(E) to identify existing and new diversion, prevention, and control programs to ameliorate such conditions;

"(F) to improve current systems to prevent and control violence by or against juveniles; and

"(G) to develop a plan to assist State and local governments to establish viable ways to reduce homicide committed by or against juveniles.

"(4) Not later than 3 years after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the Administrator shall submit a report, to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee on the Judiciary of the Senate, detailing the results of the study addressing each objective specified in paragraph (3).

"(e)(1) Not later than 1 year after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the Administrator shall—

"(A) conduct a study described in paragraph (2), using data available from Federal, State, and local enforcement agencies, and

"(B) submit to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate the results of such study.

"(2) Such study shall assess—

"(A) the characteristics of juveniles who commit hate crimes, and to prepare a profile of such juveniles, based on—

"(i) the types of hate crimes committed;

"(ii) their motives for committing hate crimes;

"(iii) the extent to which such juveniles were influenced by publications and organized groups intended to encourage the commission of hate crimes; and

"(iv) the impact of their race, ethnic background, sex, age, neighborhood, and family income on such juveniles;

"(B) the characteristics of hate crimes committed by juveniles, including—

"(i) the types of such crimes;

"(ii) the number of individuals who participated with juveniles in committing such crimes;

"(iii) the types of law enforcement investigations conducted with respect to such crimes;

"(iv) the law enforcement proceedings commenced against juveniles for committing hate crimes; and

"(v) the penalties imposed on such juveniles as a result of such proceedings; and

"(C) the characteristic of the victims of hate crimes committed by juveniles, including—

"(i) a profile of such victims; and

"(ii) the frequency with which institutions and individuals, separately determined, were the targets of such crimes.".

SEC. 115. SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS.

Section 261 Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665) is amended—

(1) in subsection (a)—

(A) by striking "(a) The" and inserting "(a) Except as provided in subsection (f), the",

(B) in paragraph (1) by inserting "(including home-based treatment programs)" after "alternatives",

(C) in paragraph (4)—

(i) by inserting "(including self-help programs for parents)" after "programs", and

(ii) by inserting before the period at the end the following:

", including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability",

(D) in paragraph (6)—

(i) in subparagraph (C) by striking the period at the end and inserting a semicolon, and

(ii) by adding at the end the following:

"that targets juveniles who have had contact with the juvenile justice system or who are likely to have contact with such system.", and

(E) by adding at the end the following:

"(8) Establishing or supporting programs designed to prevent and to reduce the incidence of hate crimes committed by juveniles, including—

"(A) model educational programs that are designed to reduce the incidence of hate crimes by means such as—

"(i) addressing the specific prejudicial attitude of each offender;

"(ii) developing an awareness in such offender, of the effect of the hate crime on the victim; and

"(iii) educating such offender about the importance of tolerance in our society; and

"(B) sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration.",

(2) in subsection (b)—

(A) by striking "(b) The" and inserting "(b) Except as provided in subsection (f), the", and

(B) in paragraph (2) by inserting "to assist in identifying learning difficulties (including learning disabilities)," after "schools,", and

(3) by adding at the end the following:

"(f) The Administrator shall not make a grant or a contract under subsection (a) or (b) to the Department of Justice or to any administrative unit or other entity that is part of the Department of Justice.".

SEC. 116. CONSIDERATIONS FOR APPROVAL OF APPLICATIONS.

(i) Section 262(d)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665a(d)(1)) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) The competitive process described in subparagraph (A) shall not apply to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq) that a major disaster or emergency exists.", and

(2) by striking subparagraph (C).

SEC. 117. GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION.

Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667–5667a) is amended to read as follows:

"PART D—GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION

"Subpart I—Gang-Free Schools and Communities

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 281. (a) The Administrator shall make grants to or enter into contracts with public agencies (including local educational agencies) and private nonprofit agencies, organizations, and institutions to establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

"(1) To prevent and to reduce the participation of juveniles in the activities of gangs that commit crimes. Such programs and activities may include—

"(A) individual, peer, family, and group counseling, including the provision of life skills training and preparation for living independently;

"(B) education and social services designed to address the social and developmental needs of juveniles which such juveniles would otherwise seek to have met through membership in gangs;

"(C) the organization of neighborhood and community groups to work closely with parents, schools, law enforcement, and other public and private agencies in the community; and

"(D) training and assistance to adults who have significant relationships with juveniles who are or may become members of gangs, to assist such adults in providing constructive alternatives to participating in the activities of gangs.

"(2) To develop within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

"(3) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(4) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(5) To promote and support, with the cooperation of community-based organizations experienced in providing services to juveniles engaged in gang-related activities and the cooperation of local law enforcement agencies, the development of policies and activities in public elementary and secondary schools which will assist such schools in maintaining a safe environment conducive to learning.

"(6) To assist juveniles who are or may become members of gangs to obtain appropriate educational instruction, in or outside a regular school program, including the provision of counseling and other services to promote and support the continued participation of such juveniles in such instructional programs.

"(7) To expand the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies.

"(8) To provide services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity.

"(9) To support activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"(b) From not more than 15 percent of the amount appropriated to carry out this part in each fiscal year, the Administrator may make grants to and enter into contracts with public agencies and private nonprofit agencies, organizations, and institutions—

"(1) to conduct research on issues related to juvenile gangs;

"(2) to evaluate the effectiveness of programs and activities funded under subsection (a); and

"(3) to increase the knowledge of the public (including public and private agencies that operate or desire to operate gang prevention and intervention programs) by disseminating information on research and on effective programs and activities funded under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 282. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 281 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 281(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, local educational agencies (as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891));

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart II—Community-Based Gang Intervention

"SEC. 285. (a) The Administrator shall make grants to or enter into contracts with public and private nonprofit agencies, organizations, and institutions to carry out programs and activities—

"(1) to reduce the participation of juveniles in the illegal activities of gangs;

"(2) to develop regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts for juvenile gang members and to curtail interstate activities of gangs; and

"(3) to facilitate coordination and cooperation among—

"(A) local education, juvenile justice, employment, and social service agencies; and

"(B) community-based programs with a proven record of effectively providing intervention services to juvenile gang members for the purpose of reducing the participation of juveniles in illegal gang activities.

"(b) Programs and activities for which grants and contracts are to be made under subsection (a) may include—

"(1) developing within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

"(2) providing treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(3) promoting the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(4) expanding the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies.

"(5) providing services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity; or

"(6) supporting activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 286. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 285 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 285(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, community-based organizations experienced in providing services to juveniles;

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart III—General Provisions

"DEFINITION

"SEC. 288. For purposes of this part, the term 'juvenile' means an individual who is less than 22 years of age.".

SEC. 118. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL AUTHORIZATION.—The first sentence of section 291(a)(1) the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)(1)) is amended to read as follows: "There are authorized to be appropriated to carry out this title (other than part D) $150,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.".

(b) PART D AUTHORIZATION.—Section 291(a)(2)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)(2)(A)) is amended to read as follows:

"(A)(i) Subject to subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996 to carry out subpart I of part D.

"(ii) Subject to subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996 to carry out subpart II of part D.".

TITLE II—AMENDMENTS TO THE RUNAWAY AND HOMELESS YOUTH ACT

SEC. 201. FINDINGS.

Section 302 of the Runaway and Homeless Youth Act (42 U.S.C. 5701) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) juveniles who leave and remain away from home without parental permission, are at risk of developing serious health and other problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;",

(2) in paragraph (4) by striking "and" at the end,

(3) in paragraph (5) by striking "temporary" and all that follows through the period at the end, and inserting "care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;"

(4) by adding at the end the following:

"(6) runaway and homeless youth have a disproportionate share of health, behavioral, and emotional problems compared to the general population of youth, but have less access to health care and other appropriate services;

"(7) early intervention services (such as home-based services) are needed to prevent runaway and homeless youth from becoming involved in the juvenile justice system and other law enforcement systems; and

"(8) street-based services that target runaway and homeless youth where they congregate are needed to reach youth who require assistance but who would not otherwise avail themselves of such assistance or services without street-based outreach.".

SEC. 202. AUTHORITY TO MAKE GRANTS.

(a) AUTHORITY.—Section 311(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(a)) is amended by striking "structure and" and inserting "system, the child welfare system, the mental health system, and".

(b) ALLOTMENT OF FUNDS.—Section 311(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(b)) is amended—

(1) in paragraph (2)—

(A) by striking "$75,000" and inserting "$100,000", and

(B) by striking "$30,000" and inserting "$45,000", and

(2) in paragraph (3) by striking "1988" each place it appears and inserting "1992".

(c) STREET-BASED SERVICES; HOME-BASED SERVICES.—Section 311 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended by striking subsection (c) and inserting the following:

"(c)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, then the Secretary may make grants under this subsection for such fiscal year to entities that receive grants under subsection (a), to establish and operate street-based service projects for runaway and homeless youth on the street.

"(2) For purposes of this part—

"(A) the term 'runaway and homeless youth on the street' means an individual who—

"(i) is less than 22 years of age; and

"(ii) may obtain the means of survival by engaging in unlawful activity in a public place;

"(B) the term 'street-based service project' means a project that—

"(i) provides staff (including volunteers) to frequent public places in which runaway and homeless youth on the street congregate, for purposes of identifying, contacting, and establishing relationships with such youth;

"(ii) assesses the problems and service needs of runaway and homeless youth on the street contacted, and refers such youth to agencies and organizations that provide needed services;

"(iii) provides street-based crisis intervention and counseling to runaway and homeless youth on the street, or refers such youth to providers of needed crisis intervention services; and

"(iv) provides health education and disease prevention services to runaway and homeless youth on the street.

"(d)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, then the Secretary may make grants for such fiscal year to entities that receive grants under subsection (a), to establish and operate home-based service projects for families that are separated, or at risk of separation, as a result of the physical absence of a runaway youth or youth at risk of family separation.

"(2) For purposes of this part—

"(A) the term 'home-based service project' means a project that provides—

"(i) case management; and

"(ii) in the family residence (to the maximum extent practicable)—

"(I) intensive, time-limited, family and individual counseling;

"(II) training relating to life skills and parenting; and

"(III) other services;

designed to prevent youth from running away from their families or to cause runaway youth or to return to their families;

"(B) the term 'youth at risk of family separation' means an individual—

"(i) who is less than 18 years of age;

"(ii) who has a history of running away from the family of such individual;

"(iii) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; and

"(iv) who is at risk of entering the child welfare system or juvenile justice system, as a result of the lack of services available to the family to meet such needs; and

"(C) the term 'time-limited' means for a period not to exceed 6 months.".

SEC. 203. ELIGIBLITY.

(a) APPLICANTS.—Section 312(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(a)) is amended by inserting "(including a host family home)" after "facility".

(b) PLAN REQUIREMENTS.—Section 312(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(b)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

"(A) a maximum capacity of not more than 25 youth and

"(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;",

(2) in paragraph (3)—

(A) by striking "child's parents or relatives and assuring" and inserting "parents or other relatives of the youth and ensuring", and

(B) by striking "child" each place it appears and inserting "youth",

(3) by amending paragraph (4) to read as follows:

"(4) shall develop an adequate plan for ensuring—

"(A) proper relations with law enforcement personnel, social service personnel, health care personnel, school system personnel, and welfare personnel;

"(B) coordination with personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of such schools; and

"(C) the return of runaway and homeless youth from correctional institutions;",

(4) in paragraph (5)—

(A) by striking "aftercare" and all that follows through "assuring", and inserting "providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring", and

(B) by striking "children" and inserting "youth",

(5) in paragraph (6) by striking "children and family members which it serves" and inserting "youth and family members whom it serves (including youth who are not referred to out-of-home shelter services)",

(6) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and

(7) by inserting after paragraph (5) the following:

"(6) shall develop an adequate plan for establishing outreach programs designed to attract individuals (including individuals who are members of a cultural minority and and individuals with limited English-speaking ability) who are eligible to receive services for which a grant under subsection (a) may be expended;".

(c) STREET-BASED SERVICES; HOME-BASED SERVICES.—Section 312 of the Runaway and Homeless Youth Act (42 U.S.C. 5712) is amended adding at the end the following:

"(c) To be eligible for assistance under section 311(c), an applicant shall propose to establish, strengthen, or fund a street-based service project for runaway and homeless youth on the street and shall submit to the Secretary a plan in which such applicant agrees, as part of such project —

"(1) to provide qualified supervision of staff, including on-street supervision;

"(2) backup personnel for on-street staff;

"(3) to provide informational and health educational material to runaway and homeless youth on the street in need of services;

"(4) to provide initial and periodic training of staff who provide services under such project;

"(5) to carry out outreach activities for runaway and homeless youth on the street and to collect statistical information on runaway and homeless youth on the street contacted through such activities;

"(6) to develop referral relationships with agencies and organizations that provide services or assistance to runaway and homeless youth on the street, including law enforcement, education, social services, vocational education and training, public welfare, legal assistance, and health care;

"(7) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds received under section 311(c), the achievements of the project under section 311(c) carried out by the applicant, and statistical summaries describing the number and the characteristics of the runaway and homeless youth on the street who participate in such project in the year for which the report is submitted;

"(8) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(9) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this subsection 311(c);

"(10) to keep adequate statistical records that profile runaway and homeless youth on the street whom it serves and not to disclose the identity such youth in reports or other documents based on such statistical records;

"(11) not to disclose records maintained on individual runaway and homeless youth on the street without the informed consent of the individual youth, to anyone other than an agency compiling statistical records; and

"(12) to provide to the Secretary such other information as the Secretary may reasonably require.

"(d) To be eligible for assistance under section 311(d), an applicant shall propose to establish, strengthen, or fund a home-based service project for runaway youth or youth at risk of family separation and shall submit to the Secretary a plan in which such applicant agrees, as part of such project —

"(1) to provide counseling and information services needed by runaway youth, youth at risk of family separation, and the family (including unrelated individuals in the family household) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parent training, financial planning, and referral to sources of other needed services;

"(2) to provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway youth and youth at risk of family separation affected by family crises); and

"(3) to establish in partnership with the families of runaway youth and youth at risk of family separation, objectives and measures of success to be achieved as a result of participating in such project;

"(4) to provide informational and health educational material to runaway youth and youth at risk of family separation in need of services;

"(5) to provide initial and periodic training of staff who provide services under such project;

"(6) to carry out outreach activities for runaway youth and youth at risk of family separation, and to collect statistical information on runaway youth and youth at risk of family separation contacted through such activities;

"(7) to ensure that—

"(i) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family participating in such project; and

"(ii) qualified supervision will be provided to staff who provide services under such project;

"(8) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under section 311(d), the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the runaway youth and youth at risk of family separation who participate in such project in the year for which the report is submitted;

"(9) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(10) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under section 311(d);

"(11) to keep adequate statistical records that profile runaway youth and youth at risk of family separation whom it serves and not to disclose the identity of such youth in reports or other documents based on such statistical records;

"(12) not to disclose records maintained on individual runaway youth or youth at risk of family separation without the informed consent of the individual youth, to anyone other than an agency compiling statistical records; and

"(13) to provide to the Secretary such other information as the Secretary may reasonably require.".

SEC. 204. APPROVAL OF SECRETARY.

Section 316 of the Runaway and Homeless Youth Act (42 U.S.C. 5712a) is amended—

(1) in the first sentence—

(A) by striking "section 311(a)" the first place it appears and inserting "subsection (a), (c), or (d) of section 311", and

(B) by striking "section 311(a)" the last place it appears and inserting "such subsection", and

(2) by striking "$150,000" and inserting "$200,000".

SEC. 205. GRANTS TO PRIVATE ENTITIES; STAFFING.

Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5714) is amended—

(1) by striking "part" each place it appears and inserting "title",

(2) in the first sentence inserting "and the programs, projects, and activities they carry out under this title" after "center", and

(3) in the last sentence by inserting "under this title" before the period at the end.

SEC. 206. ELIGIBILITY.

Section 322(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5714-2(a)) is amended—

(1) in paragraph (8) by inserting "(including individuals who are members of a cultural minority and individuals who have limited-English speaking ability)" after "individuals", and

(2) in paragraph (13)—

(A) by striking "consent of the individual youth and parent or legal guardian" and inserting "informed consent of the individual youth", and

(B) by striking "or a government agency involved in the disposition of criminal charges against youth".

SEC. 207. REPORTS.

Section 361 of the Runaway and Homeless Youth Act (42 U.S.C. 5715) is amended—

(1) in subsection (a) by striking "runaway" and all that follows through "part A", and inserting "programs, projects, and activities carried out under this title (other than part B)", and

(2) by adding at the end the following:

"(c) The Secretary shall include in each report required by this section a summary of the results of Federal evaluation of the programs, projects, and activities carried out under this title, and a description of the training provided

to the individuals who carry out such evaluation. As part of such evaluation, the Secretary shall require such individuals to visit each grantee on-site not less frequently than at 3-year intervals.".

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL AUTHORIZATION.—Section 366(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5751(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) There are authorized to carry out this title (other than part B and section 344) $75,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.", and

(2) by adding at the end the following:

"(3) After making the allocation required by paragraph (2), the Secretary shall reserve —

"(A) for fiscal year 1993 not less than $912,500, of which $125,000 shall be available for the acquisition of communications equipment;

"(B) for fiscal year 1994 not less than $826,900;

"(C) for fiscal year 1995 not less than $868,300; and

"(D) for fiscal year 1996 not less than $911,700; to carry out section 331.".

(b) TRANSITIONAL LIVING GRANT PROGRAM.—Section 366(b)(1) of the Runaway and Homeless Youth Act (42 U.S.C. 5751(b)(1)) is amended to read as follows:

"(1) Subject to paragraph (2), there are authorized to be appropriated to carry out B $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.".

(c) DEMONSTRATION PROJECTS IN RURAL AREAS.—Section 366 of the Runaway and Homeless Youth Act (42 U.S.C. 5751) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(2) by inserting after subsection (b) the following:

"(c) There is authorized to be appropriated $1,000,000 for each of the fiscal years 1993, 1994, 1995, and 1996 to carry out section 344.".

SEC. 209. NATIONAL COMMUNICATION SYSTEM; STREET-BASED SERVICES PROGRAM; HOME-BASED SERVICES PROGRAM; COORDINATING ACTIVITIES.

The Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) is amended—

(1) in part D—

(A) by striking "PART D" and inserting "PART F", and

(B) by redesignating sections 361, 362, 363, 364, and 366 as sections 381 through 385, respectively,

(2) in part C—

(A) by striking PART C" and inserting "PART E", and

(B) by redesignating sections 341 and 342 as sections 371 and 372, respectively, and

(3) by inserting after part B the following:

"PART C—NATIONAL COMMUNICATIONS SYSTEM

"AUTHORITY TO MAKE GRANTS

"SEC. 331. With funds reserved under section 385(a)(3), the Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

"PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

"COORDINATION

"SEC. 341. With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this title.

"GRANTS FOR TECHNICAL ASSISTANCE AND TRAINING

"SEC. 342. The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this title, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

"AUTHORITY TO MAKE GRANTS FOR RESEARCH, DEMONSTRATION, AND SERVICE PROJECTS

"SEC. 343. (a) The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

"(b) In selecting among applications for grants under subsection (a), the Secretary shall give special consideration to proposed projects relating to—

"(1) juveniles who repeatedly leave and remain away from their homes without parental permission;

"(2) home-based and street based services for, and outreach to, runaway youth and homeless youth;

"(3) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this title;

"(4) the special needs of runaway youth and homeless youth programs in rural areas;

"(5) the special needs of programs that place runaway youth and homeless youth in host family homes;

"(6) the special needs of programs for runaway and homeless youth who are sexually abused;

"(7) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers.

"(8) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

"(9) staff training to recognize and respond to emotional and behavioral effects of sexual abuse experienced by youth, and agency-wide strategies for responding to youth who may have been sexually abused;

"(10) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

"(11) increasing access to education for runaway youth and homeless youth.

"(c) In selecting among applicants for grants under subsection (a), the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

"TEMPORARY DEMONSTRATION PROJECTS TO PROVIDE SERVICES TO YOUTH IN RURAL AREAS

"SEC. 344. (a)(1) With funds appropriated under section 385(c), the Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A, to runaway and homeless youth in rural areas.

"(2)(A) Each grant made under paragraph (1) may not exceed $100,000.

"(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants carry out projects in not fewer than 10 States.

"(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

"(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

"(b) To be eligible to receive a grant under subsection (a), an applicant shall—

"(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

"(2) propose to carry out such project in a geographical area that—

"(A) has a population under 20,000; and

"(B) is located outside a Standard Metropolitan Statistical Area; and

"(C) agree to provide to the Secretary an annual report identifying—

"(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

"(ii) the types of services authorized under part A that were needed by, but not provided to, such youth in the geographical area served by the project;

"(iii) the reasons the services identified under clause (ii) were not provided by the project; and

"(iv) such other information as the Secretary may require.".

(b) CONFORMING AMENDMENTS.—(1) Section 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5712a) is repealed.

(2) Section 314 of the Runaway and Homeless Youth Act (42 U.S.C. 5712b) is repealed.

(3) Section 315 of the Runaway and Homeless Youth Act (42 U.S.C. 5712c) is repealed.

(3) Sections 316 and 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5713, 5714) are redesignated as sections 313 and 314, respectively.

(4) Section 365 of the Runaway and Homeless Youth Act (42 U.S.C. 5733) is repealed.

TITLE III—AMENDMENT TO THE MISSING CHILDREN'S ASSISTANCE ACT

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 407 of the Missing Children's Assistance Act (42 U.S.C. 5777) is amended by striking "1989, 1990, 1991, and 1992" and inserting "1993, 1994, 1995, and 1996".

TITLE IV—AMENDMENT TO THE CHILD ABUSE PREVENTION AND TREATMENT ACT

SEC. 401. FINDINGS.

The Congress finds the following:

(1) Circumstances surrounding the recent death of a young boy named Adam Mann in New York City prompted a shocking documentary focusing on the inability of child protection services to protect suffering children, and this documentary showed the serious need for systemic changes in our child welfare protection system.

(2) Thorough, coordinated, and comprehensive investigation will hopefully lead to the prevention of abuse, neglect, or death in future instances.

(3) An undue burden is placed on investigation due to strict Federal and State laws and regulations regarding confidentiality.

(4) While the Congress recognizes the importance of maintaining the confidentiality of records pertaining to child abuse, neglect, and death, often the purpose of these confidentiality laws and regulations are defeated when they end up protecting those responsible.

(5) Comprehensive and coordinated interagency communication needs to be established, with adequate provisions to protect against the public disclosure of any detrimental information need to be established.

(6) Certain States, such as Georgia, North Carolina, California, Missouri, Arizona, Minnesota, Oklahoma, and Oregon have already taken the necessary steps to establish by statute interagency, multidisciplinary fatality review

teams to fully investigate incidents of death believed to have been caused by child abuse or neglect with great success. Such teams should be established in every State and their scope of review should be expanded to include egregious incidents of child abuse and neglect before the child in question dies. These teams will increase the accountability of the child protection service.

SEC. 402. MODIFICATION OF CONFIDENTIALITY PROVISION REGARDING STATE GRANTS UNDER CHILD ABUSE PREVENTION AND TREATMENT ACT.

Section 107(b)(4) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106A(b)(4)) is amended to read as follows:

"(4) provide for—

"(A) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including methods to ensure that disclosure (and redisclosure) of information concerning child abuse or neglect involving specific individuals is made only to persons or entities that the State determines have a need for such information directly related to purposes of this Act; and

"(B) requirements for the prompt disclosure of all relevant information to any Federal, State, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;".

SEC. 403. SENSE OF THE CONGRESS.

It is the sense of the Congress that each State should carry out detailed review and reform of the system in the State for protecting against child abuse and neglect, including implementing formal interagency, multidisciplinary teams—

(1) to review all cases of child death where that child was previously known by the State to have been abused or neglected and those incidents of child abuse before the child dies where there is evidence of negligent handling by the State in order to hold the State accountable; and

(2) to make final recommendations regarding the outcomes of individual cases and systemic changes in the State's procedures for protecting against child abuse and neglect.

TITLE V—GENERAL PROVISIONS

SEC. 501. TECHNICAL AMENDMENTS.

(a) JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974.—The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended—

(1) in sections 202(b), 202(d), and 241(e)(5) by striking "prescribed for GS–18 of the General Schedule by section 5332" and inserting "payable under section 5376", and

(2) in sections 201(b), 202(c), 204(b), and 241(e)(6) by striking "this Act" each place it appears and inserting "this title".

(b) RUNAWAY AND HOMELESS YOUTH ACT.—The Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) is amended—

(1) in section 312(a) by striking "juveniles" each place it appears and inserting "youth", and

(2) in section 383, as so redesignated by section 209(1)(B), by striking "Act" and inserting "title".

SEC. 502. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(2) The amendment made by section 108(a)(7) shall take effect on January 1, 1993.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to fiscal years beginning before October 1, 1992.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. FAWELL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bill, H.R. 5194, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are here today to vote on passage of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992, the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974, and Runaway and Homeless Youth Act.

Before I begin my remarks, I would like to take the time to thank Chairman FORD and my colleagues from the other side of the aisle, Mr. GOODLING, ranking member of the Education and Labor Committee, and Mr. FAWELL, ranking member of the Human Resources Subcommittee for their tireless efforts in helping to put together this truly bipartisan bill.

A lot has happened this past year since the Human Resources Subcommittee started a series of reauthorization hearings. We visited Boys Town in Omaha, NE, visited gang programs and talked with gang members in Portland, OR, and Los Angeles, CA. We visited runaway shelters in Grand Island, NE, and New York City and talked with runaway and homeless kids.

We weren't too surprised to learn the Bloods and Crips are now a part of the Omaha and Portland scenes nor that there are over 300,000 homeless kids on any given day in America. What we were surprised at was the fact that the weapons that we have in the arsenal in our war to save our kids and to fight delinquency are woefully out of date and resources are totally inadequate.

All in all, the visits we have made and the hearings that we have held have led us to the belief that so as the character and nature of gangs and juvenile delinquency has evolved, so must the Juvenile Justice and Delinquency Prevention Act.

Where much of the initial thrust of the act was on ensuring the separation of juvenile offenders from adult offenders, the act also was a response to growing concerns about the lack of adequate technical expertise and resources available to State, county, and local agencies to effectively provide justice and promote programs that help provide alternatives to delinquent and at-risk juveniles.

Over the past 18 years since the implementation of the act, it has tried to evolve to adjust to the changing needs of both the system and to the youth that we serve. We know provision of services has gotten more sophisticated, but so have our youth.

So in looking at juvenile justice issues, the subcommittee went beyond the beltway to hold hearings from the west coast to the east coast, looking at both urban and rural issues and a variety of programs in an effort to find innovative new ideas that offer other alternatives and hope for our youth, in order to improve the act during its reauthorization.

One thing we have found for sure, is that the act can make a difference in the lives of both rural and urban youth. We have heard testimony from people who made obvious the need for these juvenile justice and delinquency prevention programs; we have also seen a variety of innovative programs that have new ways of providing these much-needed services. We have looked at how these programs are being implemented at the Federal level and what improvements need to be made so we can make the JJDPA as effective as possible.

The original act focused on the need for coordinated juvenile delinquency efforts on the Federal, State, and local levels and to involve the nonprofit sector in these efforts, with three major premises: Juvenile crime must be reduced, the proportion of crimes committed by juveniles should be decreased, and methods of handling juveniles should be improved. The act also created the Office of Juvenile Justice and Delinquency Prevention to provide Federal leadership with the focus in mind.

With that in mind let us now ask: What has happened over the last 18 years? Have we met the original mandates of the act? We have changed the methods of handling our youth in the juvenile justice system and have drastically reduced the number of juveniles in adult jails and have virtually removed all status offenders from locked facilities.

But we cannot say that we have been totally successful in our mission. Juvenile crime has not been reduced and the proportion of crimes committed by juveniles have not decreased.

During the first part of the 1980's, youth arrests in the United States declined while adult arrests increased. But, in the latter part of the 1980's, juvenile arrests increased at a greater pace than adults for violent crimes and a lesser rate than adults for property crimes. It appears that we are reaching a softer segment of our delinquent population while those hardcore more violent youth are increasing in numbers.

Let me repeat this. The latter one-half of the 1980's, a time which coincides with the past and present admin-

istration's total lack of commitment to juvenile justice; a fact evidenced by their action—when year in and year out they virtually zeroed out the Office of Juvenile Justice and Delinquency Prevention budget; and they ignored the fact that juvenile arrests increased at a greater rate than that of adults for violent crimes.

Mr. Chairman, we are at a crossroad in our fight for the productive lives of our youth.

The 1989-90 arrest trends show an increase in the number of juvenile arrests for murder and nonnegligent manslaughter, robbery, and aggravated assault, respectively 26 percent, 17 percent, 16 percent, alarming figures that indicate to me that we need to step up and broaden our efforts toward prevention and intervention.

We know that about 1 million kids run away from home each year and, as I stated earlier, that there are over 300,000 homeless kids on any given day in this country. These young people are probably the most vulnerable members of our society. These teenagers are impressionable—struggling with a word of constantly changing values—and are in the process of making the difficult transition from child to adult.

To me, one thing is very clear—we cannot prevent crime by locking up kids who can be saved. And we are not serving justice by certifying kids as adults in order to satisfy some need to show that we are tough on crime. And we cannot leave our children to the mean streets of America.

I would like to ask the unenlightened: What are we going to do when we fill all of our jails?

The build more jails, lock them up, and throw away the key mentality won't solve our problems.

I further would say to my hang'em from the highest tree colleagues to be careful—in this time of being tough on crime we must be careful not to lose sight of our mission to break the cycle of delinquency. We want our streets, our homes, and our families to be safe. But we cannot keep building more prisons. We must divert children-at-risk before they are irretrievable. We must provide alternatives to violent antisocial behavior. This was the mandate of the original act.

H.R. 5194 addresses all of these issues. It provides incentives for States and local jurisdictions to enter into innovative public-private partnerships. It also provides incentives to local jurisdictions to create community systems of care, involving interagency collaborative efforts; it makes the Office of Juvenile Justice and Delinquency Prevention more autonomous so that it truly serves as the leader in national juvenile justice policy; and strengthens the coordinating council.

H.R. 5194 also creates two new gang intervention programs: One that requires local education agency involvement with other local, public, and private institutions in providing a broad variety of prevention and intervention activities; and the other aimed specifically at the more hardcore gang members providing for the development of regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts and to curtail interstate activities of gangs.

The bill also allows the continuation of vital services to our runaway and homeless youth. The Runaway and Homeless Youth Act is the safety net with which we rescue those young people, who have been cast off into a sea of distrust and exploitation. The act provides basic services through community-based agencies to alleviate the problems of runaways through the provision of temporary shelter, supportive services, and counseling—and whenever possible, reuniting them with their families. The act also provides funding for transitional living programs that provide long-term shelter and life skills training to homeless youth who are attempting to make that transition to adulthood.

Finally, as we have traveled holding these hearings, we have seen that the act has had an impact on America's youth; we have learned that intervention programs do work. But we have fallen short in our mission to address the needs of our Nation's at-risk youth; in providing the dollars and the leadership necessary to fight the tide.

This legislation is committed to addressing today's immediate issues concerning youth and will make the necessary structural changes to the JJDPA in this reauthorization cycle to ensure the future of our youth. But I also ask all of you, my colleagues in this body, to support us in our quest. We need to arm those who are fighting the fight on the front lines; those who see what works and what doesn't. We need to help restore the national leadership and autonomy of the Office of Juvenile Justice and Delinquency Prevention and to maintain the integrity of the original act. We all need to work together as advocates for the future of America's youth to achieve this goal.

We have seen the terrible tragedy in my hometown, Los Angeles, 2 months ago—the tragedy of rioting, brother against brother—an act of frustration with failing judicial and social systems. What happened there is a message to all of America; we need to respond to our communities. We need to provide alternatives for our youth.

Mr. Speaker, this bill represents a bipartisan effort to address the ravages of social disease on our youth and our communities. This effort is reflected by Chairman FORD'S cosponsorship of H.R. 5194 along with that of the ranking minority members of the full committee and the subcommittee, Mr. GOODLING and Mr. FAWELL.

H.R. 5194 is a keystone in the foundation of the future of our children. I ask for your support in passing this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FAWELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Act of 1992. This bill will authorize three programs which are vital to the well-being of this country's youth: the Juvenile Justice and Delinquency Prevention Act, the Runaway and Homeless Youth Act, and the Missing Children's Act. This bill also includes a small, yet crucial, amendment to the Child Abuse Prevention and Treatment Act that was authored by Congresswoman MOLINARI.

I want to thank Congressman Martinez, the chairman of the Human Resources Subcommittee, for the bipartisan manner in which this reauthorization process has been conducted—from the handling of hearing sites and witnesses through the development of changes in these important laws.

As I mentioned, the legislation we are voting on today supports the provision of important services to at-risk youth, whether they be runaways, homeless youth, or youth involved in the juvenile justice system. By providing assistance to these young men and women today, we are ensuring they will become productive members of society tomorrow instead of part of the adult criminal justice systems.

I would like to mention several of the changes which I believe will strengthen the ability of these laws to help youth and their families.

In both the Juvenile Justice and Delinquency Prevention Act and the Runaway and Homeless Youth Act, we have added language concerning the provision of counseling to youth and their families before the youth returns home. While aftercare is important, I also believe families should receive counseling before the youth returns home to help ensure the same circumstances which led the youth to leave home do not reoccur.

We also have stressed the need for better communication between the facility where the youth is residing, whether it is a juvenile detention center or a runaway or homeless youth shelter, and their local school to ensure the instruction they are receiving is closely aligned with the instruction provided in their home school. This also will ensure that any learning problems identified in the facility are relayed to school personnel. These changes should assist in encouraging youth to stay in school and graduate once they return home.

In response to testimony received in Portland, we have added language regarding the need to work with language and cultural minority families

to ensure they are aware of all the services available to help them and can avail themselves of such services.

I would, at this point, like to mention an innovative program operating in my congressional district. On April 7, Jean Peerson, chief probation officer, Department of Probation and Court Services, DuPage County and Pat McGrath, superintendent of the DuPage County Youth House, testified before the Subcommittee on Human Resources about an innovative home detention program they have developed with allows them to treat youth locally rather than sending them to other jurisdictions when their facility is overcrowded. They have a 79 percent success rate, partially due to their ability to work with the youth and their family at the same time since the youth remains in the home setting. A definition of home-based alternative services has been included in the bill and I would certainly encourage the use of this successful alternative to incarceration.

I also am pleased to announce that my home State of Illinois recently passed a law that will finally bring it into full compliance with the jail-removal mandate of the Juvenile Justice Act. This new law will prohibit the detention of juveniles for status offenses, which is required by the Federal law.

I would like to briefly mention the addition in the Runaway and Homeless Youth Act of street-based and home-based services. These new services will target youth who are most at risk and provide effective interventions, such as family involvement, to prevent these youth from falling into delinquent activity. these new programs will be administered by existing basic grant centers, in order to maximize their effectiveness through coordination of all the different services.

I am glad to support the increased authorization levels for the different programs in this bill. I have talked to many people in my district that work with these programs and I have heard testimony from experts in these areas who have explained the benefits of these programs to me. Based on this information, I strongly believe that these are programs that deserve, on their own merits, increased funding in order to solidify and hopefully expand the progress being made.

Finally, as I mentioned, there also is a child abuse provision in this bill that was added by Congresswoman MOLINARI. This provision would amend the confidentiality requirement of the Federal child abuse laws to mandate that States share records amongst different governmental agencies, and to allow States to share information with other necessary entities in order to ensure coordinated protection against child abuse and neglect. Government agency sharing of child abuse records is currently only permissible under existing Federal law. It is surprising that this measure is necessary, but some States actually prohibit one agency from sharing this information with another agency in the name of strict confidentiality. The purpose of this provision is to liberalize the sharing of records and information in the Government's possession in order to enhance the prevention or intervention of child abuse or neglect, while at the same time protecting against the public disclosure of unsubstantiated information that could stigmatize a family. I applaud my colleague from Staten Island, NY, for her tireless work on behalf of abused and neglected children. I am proud to say that I am an original cosponsor of her bill, H.R. 5205, which is the source of this provision.

Mr. Speaker, I encourage my colleagues to support this reauthorization package.

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Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. PETRI].

Mr. PETRI. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to engage in a colloquy with our colleague, the chairman of the subcommittee with jurisdiction over this bill.

In July of 1990, the Office of Juvenile Justice and Delinquency Prevention approved a plan submitted by the State of Wisconsin which allowed Wisconsin additional time to complete statutory and regulatory changes, and specified conditions under which Wisconsin would be deemed in compliance with the act. Approval of this plan—confirmed by letter from Robert Sweet, administrator, to Jerome Lacke, executive director, Wisconsin Office of Justice Assistance, dated July 17, 1990—represented a good-faith agreement with Wisconsin which Wisconsin has been diligently implementing.

It is my understanding that it is not the intent of the committee that this bill abrogate that agreement, and that the committee report contains language on page 30 which protects Wisconsin's participation under the act, including the State-formula block grant portion of the act, as long as Wisconsin meets the requirements of the agreed to jail removal plan.

Is this also the gentleman's understanding?

Mr. MARTINEZ. Mr. Speaker, will the gentleman yield?

Mr. PETRI. I yield to the gentleman from California.

Mr. MARTINEZ. The gentleman is correct. It is not our intent to be in disagreement or out of concert with the agreement that was reached with Wisconsin, with the office of Juvenile Justice and Delinquency Prevention. It is our intent that the agreement should be honored and that Wisconsin should be protected.

Mr. PETRI. Mr. Speaker, I thank my colleague for engaging in this colloquy.

Mr. Owens of New York. Mr. Speaker, I rise to speak in support of substitute language offered to section 402 of the bill, which amends section 107(b)(4) of the Child Abuse Prevention and Treatment Act [CAPTA]. The substitute language will provide greater specificity as to who can receive disclosed records and the standards that must apply to the release of information among Federal, State or local governmental entities.

Since the enactment of CAPTA in 1974, the Federal Government has set the parameters for State laws and regulations in preserving the confidentiality of all child abuse/neglect records in order to protect the rights of the child and the child's parents or guardians.

States have endeavored to meet new needs for wider disclosure of records they have occasionally run into conflict with the regulations. Federal regulations permit States to authorize disclosure to the following persons or agencies:

An agency required to investigate reports of abuse or neglect;

A court;

A grand jury;

An authority investigating a report or providing services to the child or family;

Physicians treating a child suspected of being maltreated;

A person legally authorized to place a child in protective custody;

An agency authorized to diagnose, care for, treat, or supervise a reportedly abused or neglected child;

A person about whom such report is made;

A child named in the report;

State or local officials with oversight authority for child protective service agencies;

Persons or agencies engaged in bona fide research, with several specified restrictions on the release of the information; and

Additional persons or agencies for the purposes of carrying out background and/or employment-related screening of individuals who are engaged in child-related activities or employment.

The administration has informed us that there are at least 10 States currently out of compliance (A listing of those 10 States and a description of the conflict with the Federal requirements is attached.) It would appear that in some instances this noncompliance is a result of a misunderstanding of what the regulations allow; in other instances, States have decided to chart a different course. The substitute language will clarify legislative intent and bring some of the States back into compliance. In order to accomplish national uniformity we would expect that new rules be promulgated as soon as possible to alleviate any lingering confusion and avoid any potential court challenge.

I have worked in a bipartisan manner with Ms. MOLINARI and Mr. MARTINEZ to provide the following interpretative summary to guide the administration in drafting new regulations:

Subsection 4(A) refers to the need to develop methods to preserve the confidentiality of all records "in order to protect the rights of the child's parents or guardians." Clearly, if a family gives their consent a State can authorize the disclosure of such records related to living as well as deceased children. Additionally, the subsection requires States to develop

methods to preserve the confidentiality of all records for those persons or entities that "the State detemines have a need for such information directly related to the purposes of this Act". A State may therefore authorize the disclosure of information concerning the status and disposition of any investigations to the original reporter of the information based on the State's conclusion that the release of such limited information would encourage more reporting of child abuse and neglect. The language would also permit States to develop methods to disclose records to preadoptive parents based on the premise that their need for such information is "directly related to the purposes of the Act"; courts could also be authorized to redisclose information concerning child abuse and neglect to persons who in their discretion "have a need for such information", for example public disclosure of specific cases of child abuse and neglect would be permitted though court order to the media as long as any identifying information is redacted.

The provision in subsection 4(B) requires prompt disclosure of all relevant information to any Federal, State or local governmental entity, for example to members of interagency child fatality review teams or to multiagency review panels that may not be primarily investigative in nature. For the purposes of this provision, "relevant information" means providing access to all pertinent records (law enforcement, probation, child welfare, medical, drug abuse treatment, educational) on a child and his or her family.

CHART 1.—ISSUES IDENTIFIED WITH RESPECT TO STATE COMPLIANCE WITH THE FEDERAL CHILD ABUSE AND NEGLECT CONFIDENTIALITY REQUIREMENTS (45 CFR 1340.14(i))

State	Citation of compliance documentation	Description of conflict with Federal requirements
Alabama	Ala. Admin. Code Sections, 660–5–34—.07(4)(d)8; 660–5–34—.08(4)(3)(e)6.	Alabama's law permits disclosure to "a person whose use of such reports or records would prevent or disclose abuse or neglect of children through information contained therein as determined by the State Department of Human Resources." This does not fall within the categories of individuals or agencies permitted access under Federal regulation.
	Ala. Admin. Code Section, 660–5–34—.07(4)(d)6	The State law permits disclosure to persons engaging in research without, as required by the Federal regulations, requiring authorization by the child or the child's legal representative
	Ala. Admin. Code Section, 660–5–34—.07(4)(d)3	The State law appears to permit disclosure to a district attorney for purposes other than for investigating or prosecuting child abuse and neglect. The Federal regulation does not permit such unlimited disclosure.
	Ala. Admin. Code Sections, 660–5–34—.07(4)(d)8; 660–5–34—.07(4)(e)8; 660–5–34—.07(4)(e)7.	The State law is ambiguous concerning whether a parent who is the subject of the report can receive an unedited version of the report which fails to protect the identity of the reporter.
California	CA. Penal code 11167(d)	Provides open ended discretion of courts to disclose child abuse and neglect reports. The Federal regulation does not permit unrestricted disclosure by a court.
Florida	FL Stat. Ann. Section 119.07	Florida's public records laws allow circumventing Federal confidentiality requirements by obtaining a court order.
	FL. Stat. Ann. Section 119.07(B)(2)	The State's public records laws and its statute governing confidentiality of child abuse and neglect records apparently allow public access to information about investigations concerning deceased children. such disclosure is inconsistent with Federal confidentiality requirements.
	FL. Stat. Ann. Section 415.51(2)(D)	The State law allows disclosure of child abuse and neglect records to the alleged perpetrator, but fails to protect sufficiently the identity of individuals who might be endangered by the disclosure.
	FL. Stat. Ann. Section 415.51(4)	State law allows disclosure of child abuse and neglect records to professionals diagnosing and treating the alleged perpetrator. Such disclosure is inconsistent with Federal confidentiality requirements.
Georgia	OGCA 49–5–41(A)	State statute permits release of some information about the status and results of an investigation to "any adult requesting information regarding investigation by the Department in a governmental protective agency regarding a deceased child when such person specifies the identity of the child. . . ." Note: In order to maintain its eligibility for a Child Abuse and Neglect Basic State Grant, Georgia has invoked a "saving clause" contained in OGCA 49–5–43 which authorizes the State agency to prohibit the release of information if such disclosure would result in the loss of Federal funds.
Kentucky	KRS Section 620.050(4) (a) & (f)	Kentucky protects only "informants" of child abuse and neglect from disclosure to the suspected abuser. The Federal regulation requires States to protect the reporter of the abuse and any other person who could be in danger if that person's identity were released to the suspected abuser.
	KRS Section 620.050(4)	The Kentucky statute could be interpreted to allow disclosure of the identity of the informant and any other "at-risk" person to a parent who is the alleged abuser. The Federal regulation does not allow disclosure of the identity of reporters of child abuse and other "at-risk" people to parents who are suspected abusers.
	OAG 91–33	The Kentucky Attorney General has issued an opinion indicating that the State's confidentiality statute is not applicable to the initial written complaint or report which preceded and prompted the State's investigation. The Federal regulation requires the State to provide by statute that all reports of child abuse and neglect be kept confidential.
	KRS Section 620.050(4) (a) & (f)	The State's statute allows child abuse and neglect reports to be released to anyone "authorized by court order" and allows the court to authorize disclosure of the identity of informants to the suspected abuser.
Mississippi	Miss. Code Ann. Section 34–21–261(5)(c)	The Mississippi statute appears to allow State courts to order disclosure to individuals and organizations beyond those permitted by Federal regulations, thereby permitting circumvention of the Federal requirements by obtaining a court order.
	Miss. Code Ann. Section 43–21–261(1)(e)	The State statute allows disclosure of child abuse and neglect records for research purposes, but does not require consent by the child or the child's representative prior to disclosing information identifying individuals named in the records.
	Miss. Code Ann. Section 43–21–261(3)	The State statute allows disclosure of child abuse and neglect records to a parent, guardian, or custodian, even if alleged to be the abuser, but the statute fails to protect the identities of the reporter and other individuals who might be endangered by the disclosure.
	Miss. Code Ann. Section 43–21–261(8)	The State statute allows disclosure of inmates' and potential parolees' youth court records to the Corrections Department and Parole Board. Since the statute does not limit the disclosure to exclude abuse and neglect records, it is inconsistent with Federal confidentiality requirements.
North Carolina	N.C. Admin. Code Title 10 r. 411.0313(a)(1) and N.C. Gen. Stat. Section 74–675.	State law allows unlimited disclosure by court order, thereby permitting circumvention of Federal requirements.
	Attorney General's Opinion	Allows disclosure to the news media of certain information about Department of Social Services' investigations of children's deaths. Such disclosure, even though limited in scope, is inconsistent with Federal requirements.
	N.C. Admin. Code Title 10, v. Sec. II.0102(a)(2)	The State administrative code provision that authorizes release of information from the central registry for research purposes fails to protect the identities of individuals named in the registry's child abuse investigation material, or to require that the researcher make the requisite showings of necessity and consent prior to release of the identifying information.
South Carolina	S.C. Ann. Code Section 20–7–690(C)	The State statute allows disclosure of information to any person engaged in a bona fide research purpose, with written permission of and with any limitations imposed by the Commissioner of the State Department of Social Services, but does not provide for approval by the abused child or the child's representative.
	S.C. Ann. Code Section 20–7–690 (C)(2) (D) & (E)	The State protects from disclosure to suspected abusers identifying information only about the "reporters" of child abuse, not other individuals who may be endangered by such disclosure.
South Dakota	SDCL Section 26–7A–28(1). Note: During South Dakota's 1992 legislation session, the identified deficiencies were corrected by amendments which become effective July 1, 1992.	This section of the State law authorizes the court, in its general discretion, to release information on the identity of children taken into temporary custody. Federal law does not authorize the disclosure of child abuse and neglect information by a court, in the exercise of its general discretion. Note: The 1992 amendments provide that any information regarding an alleged, apparent, or adjudicated abused or neglected child may be released by a court only to those persons or entities listed in SDCL sec. 26–8A–13, (which persons and entities fall within the categories permitted by the Federal regulation).
	SDCL Section 26–7A–29	This section permits disclosure of information concerning children "to adult siblings of the child" who may not be the legal guardian of the child, or the child's representative, or the subject of the report of child abuse or neglect. Note: The 1992 amendments remove "adult siblings of a child" from the list of persons authorized to receive confidential information under this statute.
	SDCL Section 26–8A–13(5)	This subsection permits disclosure of child abuse and neglect information to a prospective adoptive parent(s), who is not yet authorized to care for an allegedly abused or neglected child and may not yet be the guardian of the child. Note: The 1992 amendments remove the word "prospective" from subsection (5).
	SDCL Section 26–8A–13(7)	This subsection permits disclosure at the general discretion of the court and beyond those persons or agencies permitted by the Federal regulation. Note: Subsection (7) has been amended to no longer permit disclosure by a court at its discretion.
Tennessee	T.C.A. Sections 37–1–409; 37–1–612; 37–1–604, and published Attorney General Opinions.	According to the State statutes and at least three published opinions of the State's Attorney General, anyone within the Department of Human Services (TDHS) or on a child abuse investigation team has the discretion to disclosure reports or records of reports of child abuse if such person determines that the enunciated purposes of the State statutes were served by such disclosure. The Federal regulation does not permit such broad disclosure.
	T.C.A. Sections 37–1–409(E), 37–612(E)	TDHS may confirm to anyone whether a child abuse investigation has commenced. It is nearly impossible to confirm an investigation has commenced without indirectly divulging information about the alleged abuse. The Federal regulation does not permit such a broad disclosure.
	T.C.A. Sections 37–1–409(D); 37–612(C)(2)	A district attorney may obtain reports or records of reports of child abuse on any case in his judicial district for any or no reason; the district attorney's access is not limited by time, purpose or the district attorney's official function. The Federal regulation does not provide for such an extensive exception from confidentiality.
	T.C.A. Sections 37–1–409(D); 37–612(D)	TDHS may release reports or records of reports to a professional person for the diagnosis and treatment of a person perpetrating sexual abuse. The Federal regulation does not provide for such an exception from confidentiality.
	T.C.A. Sections 37–1–409(D); 37–612(C)(4)	TDHS may release identifying information to a person engaged in bona fide research or auditing when such information is absolutely essential, suitable provision is made to maintain confidentiality, and TDHS has given written permission. The Federal regulation, however, also requires that the child's or the child's representative's written permission be obtained before identifying information is released to persons engaged in bona fide research.

CHART 1.—ISSUES IDENTIFIED WITH RESPECT TO STATE COMPLIANCE WITH THE FEDERAL CHILD ABUSE AND NEGLECT CONFIDENTIALITY REQUIREMENTS (45 CFR 1340.14(i))—Continued

State	Citation of compliance documentation	Description of conflict with Federal requirements
	T.C.A. Sections 37–1–403(E); 37–605(C)	Autopsy reports are not subject to the confidentiality requirements of Tennessee's statutes. The structure of the statutes, however, indicate that such reports may contain the name of the reporter of the child abuse, as well as other information about the investigation.

Mr. GOODLING. Mr. Speaker, I rise in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992.

This legislation has been developed on a strong bipartisan basis and contains improvements in both the Juvenile Justice and Delinquency Prevention Act and the Runaway and Homeless Youth Act, which will make them more effective in serving this extremely at-risk population of our Nation's youth.

This legislation stresses prevention, intervention and treatment. For example, it calls for greater coordination between a youth's home school and the facility where they are currently residing, whether it is a juvenile detention facility or a runaway or homeless shelter. Due to the strong correlation between poor academic achievement and juvenile delinquency, this provision could prove to be a key prevention tool. Insuring these youth can keep up with their classmates while they are not attending their local school will help guarantee they will stay in school and succeed academically once they return to their homes. If they remain in school and off the streets, the chances of their involvement in delinquent activities or of them running away again will be greatly diminished.

In addition, H.R. 5194 refocuses the youth gang provisions on home, school, and community-based intervention rather than drug and alcohol prevention. While drug and alcohol prevention programs remain an important component of gang prevention and intervention programs, this program has been restructured to address other elements in a child's life which can play an important role in whether or not they become—and stay—involved in gang activities. Strengthening a youth's ties to home, their community, and school can reduce their involvement in gangs. In addition, promoting cooperation among organizations in the community which work with at-risk youth and their families has been shown to enhance the success of any intervention program. I commend Chairman MARTINEZ, Congressman KILDEE, and Congressman FAWELL for making these important changes in this section of the law.

In title II of the bill, that reauthorizes the Runaway and Homeless Youth Act, there is a call for greater home-based and street-based services for youth. These services are designed to target troubled youth and provide the most effective interventions, such as greater family involvement, before these youth become involved in delinquent activities. I applaud Congressman FAWELL, the distinguished ranking minority member of the subcommittee of jurisdiction, for insisting that these new services be included as part of the basic center program. This will facilitate coordination in providing these youth with the new services and all the other services and resources available to them.

Mr. Speaker, I encourage all of my colleagues to support H.R. 5194. This is a good bill which will go a long way in helping our Nation's communities deal with the problems related to juvenile delinquency, and runaway and homeless youth. At the same time, it will provide at risk youth with the assistance they need to get back on the right track and lead long, successful lives.

Ms. MOLINARI. I want to express my strong support for H.R. 5194, the Juvenile Justice and Delinquency Prevention Act Amendments of 1992. Specifically, I would like to call attention to an amendment I offered during committee consideration, which was favorably accepted, regarding confidentiality laws and accountability in child abuse and neglect cases.

I would like to take this opportunity to thank and commend Congressman OWENS, chairman of the Select Education Subcommittee, for his past and future dedication and work on behalf of abused and neglected children in our Nation. In addition, I want to thank both the chairman of the Human Resources Subcommittee, Congressman MARTINEZ and the ranking minority member, Congressman FAWELL, who along with Congressman OWENS, GOODLING, BALLENGER, and PAYNE were original sponsors of my legislation, the Adam Mann Child Abuse and Neglect Protection Act.

I introduced this legislation after a number of tragic cases—child abuse cases—were brought to my attention. In addition, I informally convened a hearing on child abuse in New York City, and attended a second hearing held by the Select Education Subcommittee, chaired by MAJOR OWENS. During both of these hearings I became painfully aware of how the child protection system in our country is failing our children.

Last year, according to the National Committee for the Prevention of Child Abuse, an estimated 1,383 children in this country died from abuse or neglect. Since 1985, reported child fatalities have increased by 57 percent nationwide. The number of overall reports of child abuse and neglect grew to almost 2.7 million in 1991—a 31-percent increase since 1985. These numbers are astounding. Each number represents an innocent child who is defenseless against cruel and harmful treatment.

We have a long way to go to reach the desired level of effectiveness in identifying and preventing cases of child abuse. I firmly believe that it is a problem requiring multidisciplinary and interagency cooperation. In fact, during the hearings, expert witnesses, and families of the children the system was designed to protect repeatedly cited two major problems regarding the child protection system: confidentiality laws and the lack of accountability in the child protection services.

Currently, the Federal Child Abuse Prevention and Treatment Act [CAPTA] requires States to keep child abuse records confidential in order to receive grants under the act. Some States have passed strict confidentiality laws, or strictly interpret existing confidentiality laws in response to the Federal mandate.

My child abuse amendment in the committee substitute before us today is designed to loosen the rigidity of the confidentiality laws, while at the same time insures that harmful, unsubstantiated, family information is not released to the public. My amendment establishes the premise that, unless otherwise provided for, all records are to be kept confidential by insisting that States shall provide for "methods to preserve the confidentiality of all records."

However, my amendment clearly states that it is the intent to require States to freely share information within and among the several different agencies that deal with child abuse in one way or another by having States establish "requirements for the prompt disclosure of all relevant information to any Federal, State, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect."

For example, if the probation office calls the child protective services [CPS] to solicit information regarding whether or not a parent should be released from probation, the CPS should be allowed to relay that there have been recent reports of child abuse. Unfortunately, in some States because of the strict interpretation of the confidentiality laws, this information is not released. Sadly, this actually happened in New York not too long ago. This language also would obviously include a requirement to provide all necessary child abuse information to multidisciplinary review teams or fatality review boards that are established by States to review specific cases of abuse and neglect.

States also are required to establish procedures for "disclosure (and redisclosure) of information concerning child abuse or neglect involving specific individuals * * * to persons or entities that the State determines have a need for such information which is directly related to purposes" of the Federal child abuse laws. This is meant to allow States some flexibility in sharing this information outside the government if there is a need. For example, this language would allow States to share with preadoptive parents, information regarding past abuse involving their prospective adopted child.

This language would allow mandated reporters, such as doctors or teachers, to receive minimal feedback on the progress of a case which they reported. This would eliminate the frustration that reporters feel when they make a report and never see any progress or hear that anything is being done to protect the child. Such feedback will encourage these people to continue to fulfill their mandate to report instances of abuse or neglect.

This language also would allow for the public disclosure, through the media or otherwise, of specific cases of child abuse or neglect as long as all information which could identify the

individuals involved is redacted. Public disclosure of child abuse cases where the government has failed the child is often the best form of accountability. Public accountability of CPS's is unfortunately necessary sometimes to insure that they adequately perform their jobs. However, it is important that identifying information be removed before release so that families are not unnecessarily stigmatized. Also, the identity of the reporter should remain confidential, so as not to discourage people from coming forward with what they know. One method that States may establish to provide for this type of release is to authorize courts to release the appropriate information.

In addition, my bill would express the sense of Congress that States should create autonomous, interagency, multidisciplinary teams to review cases of death thought to have been caused by child abuse, or egregious cases of suspected child abuse—before the child dies—when the child's case is not being handled adequately by the child protection services. These review teams would then make recommendations regarding an individual case or on systemic changes that are necessary. Currently eight States have established, by statute, review teams that examine only child fatalities. This bill expresses the sense of Congress that these review teams should go a step further and also examine serious child abuse cases before the child dies.

I believe that systemic changes are needed to address the growing problem of child abuse. In attempting to change the system, we must ask ourselves: why are child protective services not properly fulfilling their mandate of protecting the child?

Over and over again, we find that there is a dearth of information-sharing between the principle government departments and agencies with a vested interest in the welfare of families and children. Federal and State confidentiality laws are central to the ability of these agencies to share essential information pertaining to a particular child abuse case. The confidentiality laws currently in place can prevent officials in one government agency from passing on vital information to officials in another agency.

Basically, these laws are meritorious. But recently, these provisions have come under increased criticism as being ineffective in protecting children. They are frequently criticized for preventing disclosure of pertinent information, and are frequently cited as causes for the potential loss of Federal funding.

I do not advocate the repeal of confidentiality laws. I respect the compelling need for privacy in family matters. And, I believe the necessity to protect families against unnecessary public disclosure of private information is equally important in the debate surrounding confidentiality laws. However, I strongly believe they unnecessarily and sometimes tragically prevent life saving information from being shared.

I do not think that a change in the confidentiality laws will be the panacea to end child abuse or neglect. However, we need to take seriously our responsibility to protect our children. Unfortunately, the answers to how we make government more responsive are not as concrete as they should be. Upon hearing the statistics for reported child abuse, neglect and deaths, I know all my colleagues agree with me that the numbers are horrific.

Please join me in rejecting the status quo and in challenging the system that is failing our children. Join me in strongly supporting swift passage of the Juvenile Justice and Delinquency Prevention Act.

Mr. FORD of Michigan. Mr. Speaker, I rise today in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Act Amendments of 1992. I want to congratulate Mr. MARTINEZ, the chairman of the Subcommittee on Human Resources, and Mr. FAWELL, the ranking minority member, for bringing the House a bipartisan bill.

This bill authorizes a wide range of Federal activities regarding juvenile delinquency. The centerpiece of the Act is the State formula grant program which allocates monies to the States in return for which the States agree to make improvements in their policies regarding juveniles. As a result, the number of youth inappropriately jailed has declined and the number receiving treatment or other alternatives has increased.

H.R. 5194 makes several improvements in juvenile justice policies. First, it establishes a direct reporting relationship between the Administrator of the Office of Juvenile Justice and the Attorney General. Second, it requires the Administrator to develop a long-term plan for administration of the Office and the development of a national strategy for delinquency prevention. Third, it requires issuance of model standards for providing health care for incarcerated juveniles. Fourth, it requires collection of data on the education status of juveniles and the inclusion in State plans of education, home-based, and family-based alternative services. State plans must prohibit the use of common staff for adults and juveniles.

The bill also strengthens data collection and dissemination efforts, research and evaluation, and technical assistance and training. H.R. 5194 devotes significant attention to the problem of youth who commit hate crimes. It also reauthorizes gang intervention programs to address the gang problem that affects many of our cities.

In addition, this bill reauthorizes the Runaway and Homeless Youth Act that supports runaway shelters and other support services to troubled youth. It also funds the Missing Children's Assistance Act that provides support for activities dealing with the problem of missing children.

Mr. Speaker, H.R. 5194 is authorized at $150 million in fiscal year 1993 and at such sums thereafter. I regret that we find ourselves in a situation where the bill is funded at no more than half its authorized level.

I urge my colleagues to support this bill overwhelmingly.

Mr. KILDEE. Mr. Speaker, I rise in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992. This is a good bill which continues the bipartisan tradition which has always attended the Juvenile Justice and Delinquency Prevention Act. H.R. 5194 extends the Juvenile Justice, Runaway and Homeless Youth, and Missing Children titles for 4 additional years.

While I strongly support the entire bill, there are two amendments on which I particularly would like to comment.

The first is the new title II, Gang-free Schools and Communities Program which is identical to H.R. 5175, the Gang-free Schools and Communities Act, which I introduced with other members of the subcommittee. This replaces the existing program which was enacted in 1988 and which, unfortunately, has accomplished little except for research. This new program authorizes $25 million to primarily support local service projects designed to help organize and support gang prevention and intervention projects which substantially involve public schools.

Educational services, when coordinated with social and mental health services available through community-based youth services organizations and other public agencies, can become powerful tools to prevent youth from joining or participating in gang activities. Youth who are, or may become, gang members must have access to these kinds of comprehensive services if we want them to participate in lawful, constructive activities, and to make safe and healthy decisions about their futures.

The second amendment addresses the issue of the so-called valid court order. This provision of the law provides an exception to the requirement that status offenders are to be treated in nonsecure facilities in cases where a youth violates a valid order of the court. I opposed the adoption of this exception 12 years ago and have continued to have concerns about its use. The bill provides for local reviews of these orders to ensure that runaways and other status offenders will not be held in secure detention if nonsecure treatment options are available in the community.

I want to express my appreciation for the hard work of the subcommittee chairman, Mr. MARTINEZ and the ranking Republican, Mr. FAWELL. They have brought us an excellent bill which I am pleased to support.

Mrs. MINK. Mr. Speaker, I rise today in strong support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992, which provides essential assistance to States to address the problems of juvenile delinquency, youth gangs, runaways, missing children, and homeless youth.

This legislation speaks to the very heart of our Nation, the future of our children and youth. Millions of children in our Nation continue to suffer from poverty, drug abuse, violence, and family disintegration. They are forced to confront difficult situations which drive them out of their homes and into the streets, many turning to gangs, crime or substance abuse.

H.R. 5194 renews our commitment to improving the plight of children in our Nation by focusing on the prevention, intervention and treatment programs for a variety of juvenile problems. It authorizes $301 million for the Juvenile Justice and Delinquency Prevention Program, the Runaway and Homeless Youth Program, the Transitional Living Program for Homeless Youth and the Missing Children's Assistance Act.

The bill elevates juvenile issues within the Department of Justice by establishing a direct reporting relationship between the Office of Juvenile Justice and the Attorney General. It requires the Administrator to develop a long-term national strategy for delinquency preven-

tion and the issuance of model standards for providing health care for incarcerated juveniles.

H.R. 5194 emphasizes intervention, prevention and family involvement in rehabilitative efforts by providing for the inclusion of home-based treatment, parent self-help and hate crime prevention programs for at risk youth.

The bill also creates two new gang intervention programs involving local education agencies and community organizations in gang prevention and developing interstate task forces to curtail the expansion of hard core gang activity across State lines. And it continues important programs to provide temporary shelter, counseling and assistance to runaways and homeless youth.

Mr. Speaker, I urge my colleagues to help us make an investment in the youth of our Nation by voting for H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992.

Mr. FAWELL. Mr. Speaker, I yield back the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ABERCROMBIE). The question is on the motion offered by the gentleman from California [Mr. MARTINEZ] that the House suspend the rules and pass the bill, H.R. 5194, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

HEAD START IMPROVEMENT ACT OF 1992

Mr. MARTINEZ. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5630) to amend the Head Start Act to expand services provided by Head Start programs; to expand the authority of the Secretary of Health and Human Services to reduce the amount of matching funds required to be provided by particular Head Start agencies; to authorize the purchase of Head Start facilities; and for other purposes, as amended.

The Clerk read as follows:

H.R. 5630

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Head Start Improvement Act of 1992".

SEC. 2. AMENDMENTS.

(a) ALLOTMENT OF QUALITY IMPROVEMENT FUNDS.—Section 640(a)(3)(B) of the Head Start Act (42 U.S.C. 9835(a)(3)(B)) is amended—

(1) in clause (i) and (iii) by striking "and second" and inserting ", second, and third", and

(2) in clause (ii) by striking "second" and inserting "third".

(b) PARENTAL SKILLS.—Section 640(a)(4)(B)(i)(II) of the Head Start Act (42 U.S.C. 9835(a)(4)(B)(i)(II)) is amended by inserting ", literacy," after "skills".

(c) REDUCTION OF REQUIRED AMOUNT OF MATCHING FUNDS.—Section 640(b) of the Head Start Act (42 U.S.C. 9835(b)) is amended—

(1) in the first sentence by striking ", in accordance with regulations establishing objective criteria,", and

(2) by inserting after the first sentence the following:

"For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—

"(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection;

"(2) the impact of the cost the Head Start agency may incur in initial years it carries out such program;

"(3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program;

"(4) whether the Head Start agency is located in a community adversely affected by a major disaster; and

"(5) the impact on the community that would result if the Head Start agency ceased to carry out such program.".

(d) ISSUANCE OF TRANSPORTATION SAFETY REGULATIONS.—Section 640 of the Head Start Act (42 U.S.C. 9835) is amended by adding at the end the following:

"(i) The Secretary shall issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs.".

(e) LOSS OF PRIORITY.—(1) Section 641(c)(1) of the Head Start Act (42 U.S.C. 9836(c)(1)) is amended by adding at the end the following: "Notwithstanding any other provision of this paragraph, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 646(a)(3).".

(2) The amendment made by paragraph (1) shall apply only with respect to terminations of financial assistance, and denials of refunding, occurring after July 29, 1992.

(f) REVIEW OF HEAD START AGENCIES.—Section 641(c)(2) of the Head Start Act (42 U.S.C. 9836(c)(2)) is amended—

(1) by inserting "(A)" after "(2)", and

(2) by adding at the end the following:

"(B) The Secretary shall conduct a review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

"(C) The Secretary shall conduct followup reviews of Head Start agencies when appropriate.".

(g) DESIGNATION OF HEAD START AGENCIES.—Section 641(d) of the Head Start Act (42 U.S.C. 9836(d)) is amended—

(1) in paragraph (6) by striking "and" at the end,

(2) in paragraph (7) by striking the period at the end and inserting a semicolon, and

(3) by adding at the end the following:

"(8) the plan of such applicant to provide (directly or through referral to educational services available in the community) parents of children who will participate in the proposed Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and

"(9) the plan of such applicant who chooses to assist younger siblings of children who will participate in the proposed Head Start program to obtain health services from other sources.".

(h) INTERIM GRANTEE.—Section 641 of the Head Start Act (42 U.S.C. 9836) is amended—

(1) in subsection (e) by striking "(c) and (d)" and inserting "(c), (d), and (e)",

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and

(3) by inserting after subsection (d) the following:

"(e) If, in a community served by a Head Start program, there is no applicant qualified for designation as a Head Start agency to carry out such program, the Secretary may appoint an interim grantee to carry out such program until a qualified applicant is so designated.".

(i) POWERS AND FUNCTIONS OF HEAD START AGENCIES.—Section 642(b) of the Head Start Act (42 U.S.C. 9836(b)) is amended—

(1) by striking "and (5)" and inserting "(5)", and

(2) by inserting before the period at the end the following:

"; (6) provide (directly or through referral to educational services available in the community) parents of children participating in its Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and (7) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources.".

(j) ADMINISTRATIVE REQUIREMENTS AND STANDARDS.—Section 644 of the Head Start Act (42 U.S.C. 9839) is amended—

(1) in subsection (b) by striking "No" and inserting "Except as provided in subsection (f), no",

(2) in the first sentence of subsection (c) by striking "subsection (a)" and inserting "subsections (a) and (f)", and

(3) by adding at the end the following:

"(f)(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities to be used to carry out Head Start programs.

"(2) Except as provided in section 640(a)(3)(A)(v), financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

"(A) a description of the site of the facility proposed to be purchased;

"(B) the plans and specifications of such facility;

"(C) information demonstrating that—

"(i) the proposed purchase will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

"(ii) the lack of alternative facilities will prevent the operation of such program; and

"(D) such other information and assurances as the Secretary may require.".

(k) TECHNICAL AMENDMENTS.—(1) Section 640 of the Head Start Act (42 U.S.C. 9835) is amended—

(A) in subsection (a)—

(i) in paragraph (2)—

(I) in subparagraph (A) by inserting "children" after "handicapped",

(II) in subparagraph (B) by striking "Commonwealth of," and inserting "Commonwealth of", and

(III) in subparagraph (C) by striking "any",

(ii) in paragraph (3)(A)(vi) by striking "section 640(a)(2)(C)" and inserting "paragraph (2)(C)", and

(iii) in paragraph (5)(B)(i) by striking "clause (A)" and inserting "subparagraph (A)", and

(B) in subsection (g) by striking "for all" and inserting "For All".

(2) Section 640A(b) of the Head Start Act (42 U.S.C. 9835a) is amended—

(A) in paragraph (1) by striking "solution" and inserting "solutions", and

(B) in paragraph (7)—

(i) in clause (iii) by striking "the", and

(ii) in clause (iv) by striking "the" the first place it appears.

(3) Section 642(c) of the Head Start Act (42 U.S.C. 9837(c)) is amended by striking "subtitle" and inserting "subchapter".

(4) Section 643 of the Head Start Act (42 U.S.C. 9838) is amended by striking "the such" each place it appears and inserting "such".

(5) Section 651(g) of the Head Start Act (42 U.S.C. 9846(g)) is amended—

(A) by striking "physicial" and inserting "physical", and

(B) by striking "(g)(1)" and inserting "(g)".

(6) Section 651A of the Head Start Act (42 U.S.C. 9846a) is amended—

(A) in subsection (f) by striking "COMPARISION" and inserting "COMPARISON", and

(B) in subsection (g) by inserting "of title I of the Elementary and Secondary Education Act of 1965" after "chapter 1".

SEC. 3. TECHNICAL AMENDMENTS RELATING TO THE CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990.

(a) PLACEMENT OF ACT.—Section 5082 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-236) is amended in the matter preceding paragraph (1) by striking "title IV" and inserting "title VI".

(b) REFERENCES IN DEFINITIONS.—Section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n) is amended—

(1) in paragraph (7)—

(A) by striking "section 4(b)" and inserting "section 4(e)", and

(B) by striking "(25 U.S.C. 450b(b))" and inserting "(25 450b(e))", and

(2) in paragraph (14)—

(A) by striking "section 4(c)" and inserting "section 4(l)", and

(B) by striking "(25 U.S.C. 450b(c))" and inserting "(25 U.S.C. 450b(l))".

SEC. 4. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(2) The amendment made by section 2(e)(1) shall take effect on July 30, 1992.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act, other than the amendment made by section 2(e)(1), shall not apply with respect to fiscal years beginning before October 1, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. FAWELL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 5630, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before I begin my opening statement, I'd like to recognize the support of several Members who requested that they be added as cosponsors of this bill after the committee report was filed. These Members are: Mr. MILLER of California, Mr. LEHMAN of California, Mrs. UNSOELD, and Mr. GUNDERSON. Although these Members will not be listed as cosponsors, their vigorous support for this legislation will no doubt be appreciated by the Head Start community and their constituents.

Mr. Speaker, the bill we are now considering is a bill introduced with the cosponsorship of my colleagues. It is to improve one of the Nation's most favored Federal programs, the Head Start Act. The Head Start Act is, as we all know, one of our better programs. It provides low-income preschool-aged children services that provide for their educational, social, health, and nutritional needs. Once these children complete the Head Start Program, they are able to enter school on an equal footing with other children, instead of starting at a disadvantage that is hard to overcome.

Studies show that the Head Start Program has been very successful, and that graduates from programs like Head Start are more likely to do well in school. They stay in school, and are less likely to engage in delinquent behavior. Head Start, therefore, is a program that should be the cornerstone of our social and educational policy—not only does it provide educational and health services to children, but it is a very effective preventive program for our at-risk youth. Without Head Start these children could not receive these valuable services.

There are many Members of Congress who are no doubt among its greatest fans. We are not, however, Head Start's only fan. There are parents, teachers, and alumni with enthusiasm for the program, there is broad support from both sides of the aisle on the House floor, and last but not least the administration has also shown great support.

I appreciate the support of my colleague, Mr. FORD, chairman of the Education and Labor Committee, as well as the support of Mr. GOODLING, the ranking minority member of the committee and Mr. FAWELL, the ranking minority member of the Subcommittee on Human Resources. Mr. KILDEE, former chairman of the subcommittee, Mrs. LOWEY, and Mr. DE LUGO who are also original cosponsors of this bill. The Head Start community thanks them.

The President requested a $600 million increase and the Congress responded in the affirmative. It is important because the Head Start Program is currently serving less than one-third of the eligible population. This infusion of funds would do a lot to increase the numbers of children who could receive the valuable services that Head Start provides. Money, however, is not the only answer to creating an effective Head Start Program.

H.R. 5630, the Head Start Improvement Act of 1992, makes many of the technical changes necessary to ensure that the Head Start Act runs at its most efficient level. Without these technical changes, many of these additional dollars would not be used effectively. Although these changes are small, the Head Start community indicates that these changes are necessary to preserve the quality of Head Start services and to allow existing programs to grow as the appropriations for the program grow.

Although these changes will greatly increase the efficiency and effectiveness of Head Start services, they will have little or no cost impact on current services, and there are no setasides or new authorization levels. We have attempted to make this bill as cost free as possible. The changes, which I will outline in a minute, will create dollars, because they will allow the existing dollars appropriated to the Head Start Program to be used more efficiently, ultimately allowing more children to receive better quality Head Start services.

STATEMENT RE: CBO COST ESTIMATE

Mr. Speaker, I'd like to ask unanimous consent to insert in the RECORD at this time a cost estimate of H.R. 5630 from the Congressional Budget Office [CBO] which was not available at the time of filing the committee report.

According to CBO, enactment of this legislation would have no impact on the budgets of Federal, State, and local governments. In addition, the pay-as-you-go procedures of section 252 of the Budget Enforcement Act, would not apply to the bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 1992.

Hon. WILLIAM D. FORD,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As requested, the Congressional Budget Office has reviewed H.R. 5630, the Head Start Improvement Act of 1992, as ordered reported by the House Committee on Education and Labor on July 30, 1992. Enactment of H.R. 5630 would amend the Head Start Act to specify certain requirements of the Secretary of Education and the Head Start agencies in carrying out the Head Start program, but would not affect the authorization level of the Head Start program. As a result, enactment of

this bill would have no impact on the budgets of federal, state or local governments. Pay-as-you-go procedures, set up by section 252 of the Budget Enforcement Act of 1990, would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them. The staff contact, Joshua Leichter, can be reached at 226-2820.

Sincerely,

ROBERT D. REISCHAUER,
Director.

The Head Start improvement bill makes nine main modifications to the existing Head Start Act which I'd like to briefly outline. The bill amends the act:

First, to allow programs to apply for money to purchase their Head Start facilities;

Second, to reformulate the requirements placed on Head Start agencies that need a waiver of non-Federal matching requirements;

Third, to require that the Department of Health and Human Services issue regulations regarding the safety features, and safe operation, of transportation used by Head Start programs;

Fourth, to allow younger siblings of Head Start students to qualify for health care benefits under the Head Start Program;

Fifth, to maintain local control of quality improvement money for 1 additional year;

Sixth, to strengthen the role of parents in the Head Start Act, and to provide the services necessary to allow them to guide their children;

Seventh, to require the Secretary to review new agencies after the first year of operation and allow for followup reviews of existing programs; and

Eighth, technical amendments to correct errors in the Head Start reauthorization bill passed last Congress and the child care development and block grant.

Ninth, to eliminate the priority given to grantees in operation before 1981 who have had their grant taken away, and to allow the Secretary to appoint an interim grantee in a community if there are no approvable grant applications.

The changes made in the Head Start improvement bill are minor and inexpensive changes. Yet, these changes, combined with the infusion of money that we are seeing with this years increased appropriations level, can radically improve the effectiveness of the program and increase the number of low-income children that receive quality educational, health, and nutrition services. I urge you to support the Head Start Improvement Act, and ask that we move promptly to preserve this program serving our Nation's low-income families and children.

□ 1720

Mr. Speaker, I reserve the balance of my time.

Mr. FAWELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5630, the Head Start Improvement Act of 1992, a bipartisan bill of which I am an original cosponsor.

Let me start by saying that I have made several visits to the LaGrange Area Head Start Program, which is in my district. I must tell you that I had always heard about the success of Head Start, but it wasn't until I visited a Head Start classroom that I really understood the reason behind that success. During that visit I met with the program staff, and realized that it is these special people that make Head Start work as well as the parents. I met people like Chen Chu Wells, who has worked tirelessly for Head Start for more than 20 years to help underprivileged families get ahead.

The movement off the Hill to bring this bill forward was spearheaded by the National Head Start Association, which is made up of thousands of people like Chen Chu Wells. They came to us seeking some programmatic changes needed in order to make Head Start even better. These are the people that live with the program every day, so I am glad that we are able to help them out.

Their priorities, which are embodied in H.R. 5630, are: First, to allow the Secretary to grant requests by Head Start agencies to purchase facilities, if it is more cost-effective than renting; second, to make it easier to apply for a waiver of the matching funds requirement during especially tough economic times; and third, to require that all Head Start vehicles meet minimum safety standards. These changes are sensible.

The purchase of facilities provision of the bill would allow a Head Start agency to petition the administration to use Head Start funds for mortgage payments instead of endlessly paying rent, if it is more cost-effective. The discretion to grant the petition would rest with the administration. There was some concern over the legal question of ownership of the facility, but those questions, I believe, have been answered by reviewing HHS's regulations—the grantee agency would hold legal title to the property, but in the deed the property would be restricted to only Federal uses unless the Government is reimbursed.

The matching funds waiver provision only would make it easier for agencies to apply for the waiver. The discretion to grant any waiver would still remain with the administration. Currently, in order to even be considered for a waiver the agency must show that the average per capita income of its county is below $3,000, or that the county suffered a natural disaster. These objective criteria hurdles make it very difficult, if not impossible, for an agency to get the administration to even listen to the merits of its request for a waiver of the match requirement.

It is especially appropriate that the transportation safety regulations provision is included in the bill that we are marking up today because just 2 weeks ago one of the largest manufacturers of school buses issued a recall on 24,000 school buses, because of potentially disastrous safety defects. It makes sense that Head Start vehicles be as safe as regular school transportation.

I also would like to compliment Congressman GOODLING, the ranking minority member of the Education and Labor Committee, on his parental education provision that is included in this bill. Parental involvement has always been an important component of Head Start, and I think that concept will be strengthened by ensuring that Head Start parents are given the literacy and parenting skills training necessary to allow these parents to help themselves and their children beyond the Head Start classroom.

These are all sensible changes that will make a good program even better. I would like to thank my colleague from California, Mr. MARTINEZ and Congressman GOODLING for their efforts in this area, and I would urge quick passage of this bill.

Mr. GOODLING. Mr. Speaker, I rise today in support of H.R. 5630, the Head Start Improvement Act of 1992. I am glad to be included as an original cosponsor of this bipartisan bill.

I am particularly encouraged because H.R. 5630 includes my parental education provisions. These provisions will require that all Head Start parents be provided with parenting and literacy skills training, either directly from the Head Start agency or through referral to other programs in the community. Similar language already exists in the statute, but my provisions will make it clear that this training for Head Start parents is mandatory. I believe this is vital, and I am glad that I was able to convince my colleagues to see my point of view on this, because the more we help the Head Start parents the more they will be able to help their children, even after the Children graduate from Head Start.

Mr. Speaker, as you know I have devoted a good deal of my life, both professionally and here in Congress, to combating illiteracy. Illiteracy is an intergenerational problem and we need to find a way to break the vicious cycle of children of illiterate parents growing up illiterate themselves. My parental education provisions in this bill will help break this cycle.

Head Start is successful at getting underprivileged children up to speed to start school, but studies have shown that many of these children lose the benefits gained in Head Start within 2 or 3 years. We need to make sure that the Head Start parents are trained in parenting skills and taught how to read so that the parents will be able to continue and maintain the lessons that the children learned while in Head Start. My provisions in this bill will help to do that.

H.R. 5630 also includes several other provisions that will make sensible changes to the

Head Start Program. I am pleased to support these changes in this bipartisan bill and I urge that it be passed.

Mr. FORD of Michigan. Mr. Speaker, I rise in strong support of H.R. 5630, the Head Start Improvement Act of 1992. While this legislation will not serve to increase the Federal financial commitment to this most valuable program, the improvement included in this bill will go far toward ensuring that Head Start services are delivered in the most cost-effective and efficient manner.

I want to commend the chairman of the subcommittee, Mr. MARTINEZ, and the ranking minority member of the subcommittee, Mr. FAWELL, for bringing this important measure forward with deliberate speed. I also want to thank Mr. GOODLING for his contributions to this bill in recognizing the vitally important role which parents play in the educational and social development of their children through the Head Start Program.

I am pleased to join today as part of bipartisan support for H.R. 5630. During a time when politics all too often muddies the water, I find it encouraging that we are able to find overwhelming support for this program of merit. Twenty-seven years after its conception, Head Start has proven itself as one of our most successful education and social service programs.

Head Start programs face three problems due to the law's prohibition on using grant funds for the purchase of facilities: First, the risk of losing space which they have renovated, second, the lack of availability of rental facilities in a community, and third, significant costs incurred by leasing, rather than owning. Allowing for the purchase of Head Start facilities furthers the intent of the act—that individual grantees continue to have the flexibility to provide services according to their local community's needs.

At a time when local communities find it increasingly difficult to allocate scarce resources to competing worthy programs, Head Start programs are jeopardized throughout the country. The reformulation of the waiver of non-Federal matching requirements will help to solve this problem.

H.R. 5630 allows the Head Start Program to serve those Head Start children and their families as efficiently and effectively as possible while continuing to provide quality services. Allowing young siblings of Head Start students to qualify for health care benefits under the program simply makes good sense. Most of these services are donated to Head Start and offering them to the younger siblings can only help with our efforts at early intervention. Establishing regulations for Head Start programs for the purchase and safe operation of vehicles used by Head Start agencies is a major step towards assuring continued quality.

I have long advocated Head Start as our first line of defense against the forces that deny our youth the opportunity to excel. Support for Head Start has been practically universal. This popular program has been responsible for helping hundreds of thousands, if not millions, of American children by giving them a head start at learning, living, and life.

Mrs. MINK. Mr. Speaker, I rise today in strong support of H.R. 5630, the Head Start Improvement Act of 1992, which seeks to make changes to the Head Start Program in order for local Head Start Programs to best utilize increasing funds provided by the Congress.

Since 1964 Head Start has been the most successful early childhood education program in the country, providing education, health, social services for needy children and their families. Studies show that participation in a quality preschool program, such as Head Start improves scholastic achievement, elevates high school graduation rates, increases enrollment in postsecondary programs, and enhances employment prospective; moreover, it decreases youth delinquency rates and use of welfare assistance.

Both the Congress and the administration have recognized the success of Head Start and with strong bipartisan support we have been able to double the size of the program over the last decade. Despite high budget deficits and constraints on domestic spending, funding for the Head Start Program increased from $911.7 million in fiscal year to $2.2 billion in fiscal 1992, almost doubling the number of participants in the program.

Even with these increases, the current program still only serves about 30 percent of the eligible children in our Nation. No one argues that even more funds are necessary for Head Start, and as we continue to move forward in this direction, the Head Start Improvement Act makes important changes to allow local programs to utilize funds to maintain and improve the quality of Head Start Program in a cost-effective and comprehensive manner.

The bill allows Head Start grant money to be used to purchase facilities. Head Start Programs have faced increasing difficulty in obtaining rental space, and have incurred increasing costs because they are not able to purchase facilities and must continue to pay rent for facilities that they have often renovated and repaired with Federal dollars.

H.R. 5630 also provides for the reformulation of the waiver of non-Federal matching requirements. At a time when our State and local budgets are rapidly declining, every Federal dollar available is often necessary to keep Head Start and other social services running. In some communities the 20 percent matching requirement is an unsurmountable barrier to establishing a Head Start Program.

The bill also retains the original intent of the program to encourage local flexibility by extending for 1 year local control over funds for the improvement of quality of Head Start Programs, such as upgrading salaries for Head Start personnel, upgrading transportation for Head Start children and improving staff/child ratios.

Finally, the bill improves parent involvement in the program, and allows for younger siblings to take part in health care services provided by the Head Start Act.

Mr. Speaker, this legislation is necessary to maintain and improve existing Head Start Programs and assure that new programs are able to provide quality education and social services to needy children and families in their communities.

I urge my colleagues to continue their support for the Head Start Program and vote for H.R. 5630.

Mr. FAWELL. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. ABERCROMBIE). The question is on the motion offered by the gentleman from California [Mr. MARTINEZ] that the House suspend the rules and pass the bill, H.R. 5630, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

STICK TO THE ISSUES

(Mr. HOAGLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks and to include extraneous material.)

Mr. HOAGLAND. Mr. Speaker, I must rise this afternoon to voice my objections to recent comments of Mary Matalin, a high official of the administration's reelection campaign. In criticizing the Clinton-Gore ticket, Ms. Matalin has sunk to new levels of political gamesmanship.

Even by today's standards, which admittedly are at the lowest level in decades, her remarks are as base and as tasteless as I can remember hearing, and this, after the administration has promised to stick to the issues and avoid malicious mudslinging.

As Associated Press story appears in this morning's Omaha World Herald which I ask be made part of the record.

An example of her unrestrained, intemperate barrages: "We respectfully request you and your fellow Democrat sniveling hypocrites read our lips: shut up and sit down so we can get back to more highlights of the Clinton record."

I also place in the record a Washington Post article from last Saturday. This woman will apparently say anything, anywhere, especially when we hear bad economic news. Perhaps this rhetoric reflects desperation in the Bush campaign. I don't know.

But Mr. Speaker and colleagues, let everyone dignify the campaign. Let us stick to the problems of health care, jobs, and education, the important issues the American people expect and want to be debated in a Presidential campaign. Let us stay out of the mud.

Mr. Speaker, I include the following news article above referred to:

[From the Omaha World Herald, Aug. 3, 1992]

BUSH CAMPAIGN FIRES SNIDE SHOT

ROSEMONT, ILL. (AP).—The Bush campaign, accused by Arkansas Gov. Bill Clinton of mudslinging, responded Sunday by unleashing a vitriolic compendium of nasty things that Clinton and other Democrats have said about Bush.

The campaign styled its broadside in the form of a who-said-what quiz for Clinton and other "sniveling hypocritical Democrats."

Among its questions:

"Which campaign had to spend thousands of taxpayer dollars on private investigators to fend off "bimbo eruptions?"

"Which candidate * * * admitted there was a deliberate 'pattern of omission' in his answers on marijuana use?"

"Who called George Bush a tax evader * * * 'That fellow who claims Texas so he doesn't have to pay taxes in Maine'?"

The answer to these, the Bush campaign said, was Clinton and his aides.

But others include shots at Bush fired by Sen. Tom Harkin, D-Iowa, Rep. Maxine Waters, D-Calif., Democratic Party Chairman Ron Brown and others.

"If they want to stick to the issues, then fine, knock off the cheap shots," Mary Matalin, the Bush campaign's political director, said Sunday of the Clinton camp. "We haven't done anything but contrast our record with his. Back off boys."

As to the tone of the release, Matalin said, "It's Sunday. I was having a little fun."

The release said, "We respectfully request you and your fellow Democrat sniveling hypocrites read our lips: shut up and sit down so we can get back to more highlights of the Clinton record."

The tone of the "quiz" was unusually snide even by the standards of attack politics.

One GOP quiz question quotes Harkin, who challenged Clinton in the primary, as saying that Bush "better be ready to protect the family jewels."

It quotes Rep. Waters as calling Bush a racist.

[From the Washington Post, Aug. 1, 1992]

CLINTON CAMPAIGN RETURNS THE RHETORIC—BUSH CAMP ATTACKED FOR GOING NEGATIVE

(By Ruth Marcus)

Capping a week of charges and countercharges, the Clinton campaign yesterday seized on some new anti-Clinton rhetoric from a high official of President Bush's campaign in the hope that it would backfire against Bush.

Its ammunition was a remark by Bush-Quayle campaign political director Mary Matalin in which she raised many of the so-called character issues that have dogged Arkansas Gov. Bill Clinton even while saying the issues will not be raised in the campaign.

In a story in yesterday's New York Times, Matalin was asked if the GOP campaign was subtly employing the "character" issue to remind voters about Clinton's marital troubles, use of marijuana and draft record.

"The larger issue is that he's evasive and he's slick," Matalin told the Times. "We've never said to the press that he's a philandering, pot-smoking draft dodger."

"The way you just did?" Matalin was asked, according to the Times.

"The way I just did," she said. "But that's the first time I've done that. There's nothing nefarious or subliminal going on."

The Clinton campaign said there was nothing subliminal about what it viewed as an attempt to rehash old charges against Clinton at a time when Bush is lagging in the polls. The campaign swiftly issued a page of quotations from Bush vowing to eschew negative campaigning, along with statements from Democratic vice presidential candidate Albert Gore Jr. and party chairman Ronald H. Brown assailing Matalin's remarks.

"It is clear that this is part of a pattern," Brown said. "The same Bush-Quayle campaign that questioned Ross Perot's sanity and commitment to the Constitution and impugned Al Gore's patriotism is now trafficking in tabloid trash about the Clinton family."

Gore called on Bush to live up to "his promise to keep this campaign on the issues and out of the mud."

Matalin expressed no regrets yesterday about her comments.

"They are sniveling hypocrites on this," she said, noting that Clinton and other Democrats have repeatedly bashed Bush. "These guys have been on the road 169 days and they have yet to miss a day they didn't bash Bush."

Charles Black, senior political advisor to the campaign, said there was nothing wrong with Matalin's remarks.

"She was responding to a reporter's question," he said. "She didn't bring it up, and her answer is, 'No, we're not going to make personal attacks.' And we're not. She's not, nobody is." The campaign, he said, "would never bring that up. The reporter brought it up."

Black added: "It appears to me they're kind of sensitive about some subjects. I would have ignored it if it was me."

In choosing to publicize the Matalin quotation, the Clinton camp was making the political calculation that it had more to gain from accusing Bush of mudslinging than it had to lose from reminding voters about Clinton's admitted past marital difficulties and other potential deficits.

The quick response echoed the aggressive reaction of the campaign earlier this week to accusations from White House spokesman Marlin Fitzwater that the Democratic team was unqualified to handle foreign policy and that Clinton's comments on Yugoslavia were "reckless."

"What they're counting on is that they can continue to let this seep out, seep out, seep out," said Clinton communications director George Stephanopoulos. But, he said, "If President Bush is going to play this kind of same old dirty politics, he ought to be called onto the carpet for it."

Meanwhile, the Bush campaign, which had promised a daily fax attaching some aspect of Clinton's record, fell behind schedule on Day Three yesterday, since Matalin was traveling in California with Bush.

Staff writer Ann Devroy in California contributed to this report.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MARTINEZ) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. BONIOR, for 60 minutes each day, on September 9, 15, 16, 22, 23, 29, and 30.

Mr. LIPINSKI, for 5 minutes each day, on August 4 and 11.

Mr. GONZALEZ, for 60 minutes each day, on September 9, 10, 11, 14, 17, 18, 21, 24, 25, and 28.

Mr. HAYES of Illinois, for 60 minutes, on August 4.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. FAWELL) and to include extraneous matter:)

Mr. FIELDS.

Mr. MYERS of Indiana.

Mr. WELDON.

Mr. MICHEL.

Mr. COX of California.

(The following Members (at the request of Mr. MARTINEZ) and to include extraneous matter:)

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN in 10 instances.

Mr. ANNUNZIO in six instances.

Mrs. LLOYD in five instances.

Mr. HAMILTON in 10 instances.

Mr. DE LA GARZA in 10 instances.

Mr. ROE.

Mr. FALEOMAVAEGA.

Mr. MONTGOMERY.

Mr. ASPIN.

Mr. OLVER.

Mr. DE LUGO.

Mr. LANTOS.

Mr. MAZZOLI.

Mr. EDWARDS of California.

Mrs. LOWEY of New York.

ADJOURNMENT

Mr. MARTINEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 28 minutes p.m.) the House adjourned until tomorrow, Tuesday, August 4, 1992, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4052. A letter from the Chairman, District of Columbia Retirement Board, transmitting the Board's comments on the enrolled actuary's report on the disability retirement rate for police officers and firemen for 1991, pursuant to D.C. Code Annotated, section 1-725(b); to the Committee on the District of Columbia.

4053. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-282, "Real Property Tax Exemption Act of 1992," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4054. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-283, "Real Property Tax Rates for Tax Year 1993 and Real Property Tax Revision and Re-classification Amendment Act of 1992," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4055. A letter from the Comptroller General, General Accounting Office, transmitting the list of all reports issued or released in June 1992, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

4056. A letter from the Director, Administrative Office of the U.S. Courts, transmitting the actuarial reports on the Judicial Retirement System, the Judicial Officers' Retirement Fund, the Judicial Survivors' Annuities System, and the Claims Court Judges' Retirement System for the calendar year 1991, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4057. A letter from the Farm Credit Bank of Texas, transmitting the 1991 annual report

and audited financial statement of the Farm Credit Banks of Texas Pension Plan, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4058. A letter from the Librarian of Congress, transmitting the report of the activities of the Library of Congress, including the Copyright Office, for the fiscal year ending September 30, 1991; accompanied by a copy of the annual report of the Library of Congress Trust Fund Board, pursuant to 2 U.S.C. 139; to the Committee on House Administration.

4059. A letter from the Acting Comptroller, Department of Defense, transmitting the quarterly report on program activities for facilitation of weapons destruction and nonproliferation in the former Soviet Union, pursuant to Public Law 102–229, section 108; jointly, to the Committees on Appropriations and Foreign Affairs.

4060. A letter from the Chief, Forest Service, Department of Agriculture, transmitting a report entitled "Potential Impacts of Aircraft Overflights of National Forest System Wildernesses," pursuant to 16 U.S.C. 1a–1 note; jointly, to the Committees on Interior and Insular Affairs and Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 3837. A bill to make certain changes to improve the administration of the Medicare Program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans; with an amendment (Rept. 102–486 Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROWN: Committee on Science, Space, and Technology. H.R. 3848. A bill to encourage the growth and development of commercial space activities in the United States, and for other purposes; with an amendment (Rept. 102–769, Pt. 1). Ordered to be printed.

Mr. BROOKS: Committee on the Judiciary. H.R. 5399. A bill to amend the U.S. Commission on Civil Rights Act of 1983 to provide an authorization of appropriations (Rept. 102–770). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 1241. A bill to impose a criminal penalty for flight to avoid payment of arrearages in child support; with amendments (Rept. 102–771). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 3795. A bill to amend title 28, United States Code, to establish three divisions in the Central Judicial District of California, Rept. 102–772). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 4209. A bill to amend the act entitled "An Act conferring jurisdiction on certain courts of the United States to hear and render judgment in connnection with certain claims of the Cherokee Nation of Oklahoma," approved December 23, 1982; with an amendment (Rept. 102–773, Pt. 1). Ordered to be printed.

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 5686. A bill to make technical amendments to certain Federal Indian statutes, (Rept. 102–774). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 5475. A bill providing policies with respect to approval of bills providing for patent term extensions, and to extend certain patents; with an amendment (Rept. 102–775). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 2731. A bill to amend section 2680(c) of title 28, United States Code, to allow Federal tort claims arising from certain acts of customs or other law enforcement officers, and to amend section 3724 of title 31, United States Code, to extend to the Secretary of the Treasury the authority to settle claims for damages resulting from law enforcement activities of the Customs Service; with amendments (Rept. 102–776). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 1206. A bill to confer jurisdiction on the United States Claims Court with respect to land claims of Pueblo of Isleta Indian Tribe; with an amendment (Rept. 102–777). Referred to the Committee of the Whole House on the State of the Union.

Mr. MONTGOMERY: Committee on Veterans Affairs. H.R. 5619. A bill to reorganize technically chapter 36 of title 38, United States Code, and for other purposes; with amendments (Rept. 102–778). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FASCELL (for himself, Mr. BROOMFIELD, Mr. GEPHARDT, Mr. MICHEL, Mr. GINGRICH, Mr. DE LA GARZA, Mr. COLEMAN of Missouri, Mr. ASPIN, Mr. BROWN, Mr. WYLIE, Mr. HAMILTON, Mr. GILMAN, and Mr. LEACH):

H.R. 5750. A bill to support freedom and open markets in the independent states of the former Soviet Union, and for other purposes; jointly, to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, Agriculture, Armed Services, and Science, Space, and Technology.

By Mr. FASCELL (for himself and Mr. BROOMFIELD):

H.R. 5751. A bill to provide for the distribution within the United States of certain materials prepared by the U.S. Information Agency; to the Committee on Foreign Affairs.

By Mr. MILLER of California (for himself and Mr. WAXMAN):

H.R. 5752. A bill to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Energy and Commerce.

By Mr. MINETA (for himself, Mr. ROE, Mr. HAMMERSCHMIDT, and Mr. SHUSTER):

H.R. 5753. A bill to make technical corrections to title 23, United States Code, the Federal Transit Act, and the Intermodal Surface Transportation Efficiency Act of 1991, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. NOWAK (for himself, Mr. ROE, Mr. HAMMERSCHMIDT, and Mr. PETRI):

H.R. 5754. A bill to provide for the conservation and development of water and related resources, to authorize the U.S. Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. ROE (for himself and Mr. HAMMERSCHMIDT):

H.R. 5755. A bill to amend the John F. Kennedy Center Act to authorize appropriations for administration of the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Public Works and Transportation.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 755: Mr. EVANS.

H.R. 1241: Mr. BACCHUS and Mr. LANCASTER.

H.R. 1427: Mr. SOLOMON.

H.R. 2125: Mr. RANGEL, Mr. TOWNS, Mr. WALSH, and Mr. HUGHES.

H.R. 3204: Mr. BEILENSON.

H.R. 3545: Mr. TORRICELLI.

H.R. 3748: Mr. MAVROULES.

H.R. 5214: Mr. EARLY.

H.R. 5274: Mr. KLECZKA, Mr. MARLENEE, Mr. COSTELLO, Mr. HOCHBRUECKNER, Mr. PARKER, Mr. DURBIN, Mr. CONDIT, Mr. ENGLISH, Mr. JOHNSON of South Dakota, Mr. CONYERS, Mr. BENNETT, Mr. BROWN, and Ms. KAPTUR.

H.R. 5317: Mr. PASTOR.

H.R. 5360: Mr. TOWNS and Mr. MARKEY.

H.R. 5434: Mrs. LOWEY of New York and Mr. KENNEDY.

H.R. 5477: Mr. SHAW.

H.R. 5478: Mr. SARPALIUS, Mr. ANTHONY, Mr. LEWIS of Florida, Mr. TOWNS, Mr. BROWN, Mr. HERTEL, Mr. ANDERSON, Mr. MCCOLLUM, and Mr. PRICE.

H.R. 5531: Mr. WILSON, Mr. SARPALIUS, Mr. HALL of Texas, Mr. GEREN of Texas, Mr. COLEMAN of Texas, Mr. CHAPMAN, Mr. EDWARDS of Texas, Mr. LAUGHLIN, Mr. FROST, Mr. BRYANT, Mr. DOOLEY, Mr. MCDERMOTT, Mr. HORTON, Mr. GUARINI, Mr. HAYES of Illinois, Mr. OWENS of New York, Mr. FASCELL, Mrs. BOXER, Mr. DIXON, and Mr. KOPETSKI.

H.R. 5591: Mr. MCCANDLESS, Mr. BOEHLERT, and Mr. ZELIFF.

H.R. 5619: Mr. HAMMERSCHMIDT, Mr. JENKINS, Mr. HEFNER, Mr. RICHARDSON, Mr. STENHOLM, Mr. PAYNE of Virginia, Mr. PARKER, and Mr. HARRIS.

H.J. Res. 393: Mr. SCHEUER, Mr. TOWNS, Mr. PANETTA, Mr. SHUSTER, Ms. KAPTUR, Mr. ENGEL, Mr. SHARP, Mr. STOKES, Ms. WATERS, Mr. HAMILTON, Mr. ATKINS, Mrs. MORELLA, Mr. SPENCE, Mr. YOUNG of Florida, Mr. HUGHES, and Ms. MOLINARI.

H.J. Res. 398: Mr. CHANDLER, Mr. MOORHEAD, Mr. MILLER of California, Mr. DE LA GARZA, Mr. MFUME, and Mr. WASHINGTON.

H.J. Res. 399: Mr. WOLPE and Mr. YOUNG of Florida.

H.J. Res. 478: Mr. ENGEL.

H.J. Res. 489: Mr. LEVINE of California, Mr. LENT, Mr. BILIRAKIS, Mr. LEWIS of Florida, Mr. GILLMOR, Mr. MOORHEAD, Mr. HUNTER, and Mr. HAMMERSCHMIDT.

H.J. Res. 495: Mr. EWING, Mr. MFUME, Mr. ROGERS, Mr. CLAY, Mr. ANDERSON, Mr. ANNUNZIO, Mr. AUCOIN, Mr. BORSKI, Mrs. BOXER, Mr. CAMP, and Mr. YOUNG of Florida.

H.J. Res. 505: Mr. MCCLOSKEY, Mr. VALENTINE, Mr. KOSTMAYER, and Mr. DUNCAN.

H. Res. 359: Mr. ENGEL.

H. Res. 502: Mr. SCHIFF.

H. Res. 515: Mr. PAYNE of New Jersey, Mr. ATKINS, Mr. LANTOS, Mr. MCNULTY, Mrs. SCHROEDER, and Mrs. UNSOELD.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1790: Mr. DANNEMEYER.

PETITIONS, ETC.

Under clause 1 of rule XXII,

172. The SPEAKER presented a petition of the Council of the County of Kauai, Hawaii, relative to the Federal trust relationship and obligation to native Hawaiians; which was referred to the Committee on Interior and Insular Affairs.